2009

Pen and Ink, LLC and David Lynton v. City of Alpine : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PEN & INK, LLC and DAVID LYNTON,

Petitioners/Appellants,

vs.

CITY OF ALPINE,

Respondent/Appellee.

WILLOW CANYON HOMEOWNER'S ASSOCIATION,

Plaintiff in Intervention,

vs.

PEN & INK, LLC, a Utah limited liability company, and DAVID LYNTON,

Defendants in Intervention.

Case No. 20090403 30

BRIEF OF APPELLANTS

Appeal from the Fourth Judicial District Court, Utah County, State of Utah
The Honorable James R. Taylor

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STATEMENT OF JURISDICTION

This Court's jurisdiction rests upon Utah Code Ann. § 78A-4-103(2)(j).

STATEMENT OF THE ISSUES

ISSUE 1: Did the trial court err in granting Appellee's Motion for Summary Judgment and denying Appellants' Motion for Summary Judgment?

Standard of Review: De novo. By definition, "a district court does not resolve issues of fact at summary judgment," therefore, this Court "consider[s] the record as a whole and review[s] the district court's grant of summary judgment de novo, reciting all facts and fair inferences drawn from the record in the light most favorable to the nonmoving party." *Poteet v. White*, 2006 UT 63, ¶ 7, 147 P.3d 439, 441.

Preservation for Appeal: R. at 624.

CONSTITUTIONAL PROVISIONS, STATUTES, ETC.

None.

STATEMENT OF THE CASE

Petitioners/Appellants Pen & Ink, LLC and David Lynton filed a Petition for Judicial Review on October 23, 2008 requesting that the District Court overturn Respondent/Appellee's municipal land use decision. Appellants moved for summary judgment on December 4, 2008, claiming that Appellee had acted arbitrarily and that they were entitled to judgment as a matter of law. On December 17, 2008, Appellee moved for summary judgment, claiming that Appellee's land use decision was based upon substantial evidence and that it was entitled to judgment as a matter of law.

The trial court heard oral argument on the two motions on March 11, 2009. At the conclusion of the hearing, the court took the matter under advisement. On March 30, 2009, the court entered a Memorandum Decision granting Appellee's Motion for Summary Judgment on the grounds that Appellee's land use decision was based upon substantial evidence and denying Appellant's Motion for Summary Judgment on those same grounds. On April 20, 2009, the court filed its Order of Summary Judgment. Appellants filed a Notice of Appeal on May 18, 2009.

STATEMENT OF FACTS

Relevant City Ordinances and Contracts

Appellants own 15.06 acres of real property ("Property") located within the boundaries of Alpine City. (R. at 341.) Alpine City annexed the Property under an Annexation Agreement that was recorded by the Utah County Recorder on July 30, 1996. (R. at 249.) The Property is not part of a subdivision, but rather is part of the Willow Canyon project, which was included along with several other development projects within the Annexation Agreement. (R. at 199-200, 336.)

The Annexation Agreement specifically addresses how much of the natural landscape a landowner may disturb on his or her lot as follows:

> ...on lots larger than 30,000 square feet above the High Bench Ditch no more than 50% of the natural landscape will be disturbed and no more than 50% of the lot area will be fenced.

(R. at 252.) The Annexation Agreement does not define "lot," and it does not impose any limitation on lot size. (R. at 214-254.) The Annexation Agreement does, however, specifically address the location and maximum allowable number of residential lots that can be located within the Willow Canyon project, as well as permissible building and lot use. (R. at 250-251, ¶¶ 3(D) and 5(B).)

The Annexation Agreement requires that all owners of property within the annexation area agree to abide by the "general provisions of the development plan which is Attachment B to the annexation policy declaration." (R. at 251-252.) It further requires that the "maximum number of residential lots within the Willow Canyon project shall not

exceed 5, to be distributed within the area as shown on Attachment B to the annexation declaration." (R. at 252, ¶ 3(D).)

Despite these references within the Annexation Agreement, no section within the Annexation Agreement is titled "annexation policy declaration," no document entitled "annexation policy declaration" was ever recorded on the Property, and Appellee never produced a copy of an "annexation policy declaration" in the record before the trial court. (*See* R. at 214-254.) Furthermore, no document entitled "Attachment B" to the annexation policy declaration was ever recorded on the Property, and no such document has been produced or even identified by Appellee at any point in these proceedings or within the appellate record. (*Id.*) A document entitled "Preliminary Plat of Willow Canyon Subdivision" ("Preliminary Plat") was recorded as part of the Annexation Agreement, but it contains no references to the Annexation Agreement. (R. at 246.)

Similar to the Annexation Agreement, the text of the current Alpine City Development Codes (A.C.D.C. §3.1.11(24)) does not restrict a lot to any maximum size. (R. at 336.) The Property is located within the CE-5 Critical Environment zone, a residential zone that imposes no limitation on lot size. (R. at 82, ¶ 2.) None of the provisions within the CE-5 Critical Environment zone requirements (A.C.D.C. § 3.5.1 et seq.) define, restrict, or speak to individual maximum lot size requirements in any way. (R. at 262.). However, minimum lot size is specifically established (A.C.D.C. § 3.9.6(2)) at 20,000 square feet per lot. (R. at 336.).

The Property is also located within Alpine City's CR-40,000 zone. (R. at 103.) None of the provisions within the CR-40,000 zone requirements (A.C.D.C. § 3.4 et seq.)

define, restrict, or speak to individual maximum lot size requirements in any way. (R. at 335.) However, minimum lot size is specifically established A.C.D.C. § 3.9.6(2)) at 20,000 square feet per lot. (R. at 335.) The Alpine City Ordinances (A.C.D.C. § 3.9.7(1)) also define specifically "[a] portion of each project area" that "shall be set aside and maintained as designated open space" for both the CR-40,000 zone and the CE-5 zone. (R. at 335.) Any project area within a CR-40,000 zone must set aside at least 25% of its total project area as open space, and any project area within a CE-5 zone must set aside at least 50% of its total project area as open space. (R. at 106.)

Additionally, another property within the same Willow Canyon project is deemed to have a ten (10) acre lot. (R. at 106.) In 2005, Appellee stated that the property within the Willow Canyon project that is owned by the Van Leeuwens was a ten acre lot for site plan approval purposes. (R. at 106.)

Past Planning Commission and City Council Willow Canyon Site Plan Approvals

Appellants are the fourth applicants for building approval in the Willow Canyon project area. (R. at 187-190.) Pursuant to Alpine City Ordinance 4.14 et seq., Appellants submitted a building site plan to the Alpine City Planning Commission. (R. at 212-215.) This site plan application indicated how much of the Property Appellants planned to disturb when constructing their home. (R. at 212-215.)

The other three applicants—the Bushmans, Kesters, and Van Leeuwens—all received approval from Appellees to construct their homes in the Willow Canyon project area. (R. at 187-190.) At least two of the other three applicants—the Kesters and the Van Leeuwens—were permitted (without objection) to disturb over 30,000 square feet of

property within their lots. (R. at 192.) Appellee permitted the Van Leeuwens to disturb 60,000 square feet of property within their lot. (R. at 197.)

When the Planning Commission considered the Kester site plan, no mention was even made of the Annexation Agreement, and the Planning Commission only required that Kester provide a "conservation easement on 15 acres." (R. at 116.) When the Planning Commission considered the Bushman site plan, it considered the Annexation Agreement, but did not ever consider whether the site plan complied with the purported land disturbance requirements. (R. at 110.) The Planning Commission only considered "whether or not the height of the home would conform to the restrictions in the Annexation Agreement" and that Bushman had "submitted the description of the lot and conservation easement as required." (R. at 110.)

The Van Leeuwen site plan application was the third Willow Canyon project application that the Planning Commission considered, and it was the last application that the Planning Commission considered prior to Appellants' application. (R. at 108.) During its public meeting, the Planning Commission stated that the Van Leeuwen's "10-acre parcel" of land was part of the "Willow Canyon annexation" and that, "[a]s required by the annexation agreement, five of the ten acres would be put into a conservation easement." (R. at 108.) Furthermore, the only consideration that the Planning Commission gave to Van Leeuwens' request that they be permitted to disturb 60,000 square feet was to state that the site plan "[m]eet the water policy for a 60,000 sq. ft. building envelope." (R. at 108.)

When the City Council considered the Van Leeuwen site plan application, the City Council specifically determined that the Van Leewen lot was a 10-acre lot. (R. at 106.) The City Council specifically recorded the following in its minutes:

> **3. Building and Lot Use**: The annexation agreement requires that, "The owners ... on losts larger than 30,000 square feet above the High Bench Ditch have no more than 50% of the natural landscape will be disturbed (sic) and no more than 50% of the lot area will be fenced. The site plan drawing shows the disturbed and fenced area to be 59,700 sq. ft. which amounts to 14% of the total lot."

(R. at 106.) Therefore, based upon the language of the minutes, the City Council interpreted the Annexation Agreement as (1) equating lot size with parcel size, (2) requiring that 50% of the parcel/lot be undisturbed, and (3) allowing 14% of that lot to be disturbed and/or fenced. (R. at 106.) The City Council then approved the Van Leeuwen site plan application without objection. (R. at 106.)

Appellants' Site Plan Application & Efforts to Secure Building Site Plan Approval

Prior to the first Planning Commission meeting, Appellants prepared a building site plan and submitted it to Appellee. (R. at 209-212.) The contemplated residence would be wholly located within the boundaries of the land which had been annexed into Alpine City through the Annexation Agreement. (R. at 190.) Appellants' Application requested permission to disturb approximately 90,000 square feet of the natural landscape of the Property. (R. at 190.) Appellants' Property extends over 15.06 acres, which is greater than 650,000 total square feet, and the 90,000 square feet of proposed disturbance would cover approximately 14% of the total property area. (R. at 334.)

Appellants submitted their Application to the Planning Commission to secure a building permit in order to construct a residence on the Property. (R. at 209-212.) The

Planning Commission first considered the Application on August 19, 2008. (R. at 190.) After discussing the Annexation Agreement and its possible lot size requirements, the Planning Commission delayed any decision regarding Application approval until the next scheduled meeting. (R. at 190.) The Planning Commission again considered Appellants' Application on September 16, 2008. (R. at 190.)

At this meeting, the Planning Commission discussed what disturbance area limitations it would apply to Appellants' Application. (R. at 190.) To this end, the Planning Commission claimed that the Preliminary Plat document was, in fact, the Attachment B referenced in the Annexation Agreement. (R. at 190.) According to the Planning Commission, this Preliminary Plat/purported Attachment B allowed for a maximum of five "lots" of 40,000 square feet each within the range of land upon which the Property is located. (R. at 190.) The Planning Commission also stated that the Preliminary Plat/purported Attachment B was specifically intended to strictly limit the size of each of the lots within the Willow Canyon project, but it was not intended to restrict the location of the lots within the Willow Canyon Project. (R. at 190.)

During the September 16, 2008 meeting, David Church, the attorney representing Appellee at the meeting, stated the following regarding the Annexation Agreement:

- That, based upon his memory, Mr. Church understood that "it was the intent of the documents that the City acknowledge that there were five separate owners who held five distinct parcels of land, which were included in the annexation." (R. at 190.)

- Also, that "[b]ecause it was the intent of the City to discourage large, estate lots on the foothills, the intent of the document was to limit the lot size within each parcel to 40,000 square feet." (R. at 190.)
- That "the documents, the Annexation Agreement and the Annexation Policy Declaration were intended to be enforceable against later purchasers," which was "one of the reasons why they were recorded with the county recorders office." (R. at 183.)
- Therefore, "[t]o that end, there was an exhibit that showed 40,000 square-foot areas with the remainder of the land in open space in a conservation easement." (R. at 190.)
- Then, "at some point the City had allowed the lot size to go up to 60,000 square feet," and the "PRD Ordinance had been amended to increase the maximum lot size from 40,000 square feet to 60,000 square feet." (R. at 190.)
- Mr. Church acknowledged that "[t]he latest version of the PRD Ordinance had no upper limit on the lot size." (R. at 190.)
- Also, Mr. Church acknowledged that, for some unexplained reason, "the last site plan for Van Leeuwens had been allowed to have an area of disturbance of 60,000 square feet." (R. at 190.)

Planning Commission Chairman Jannicke Brewer also stated that the Annexation Agreement "actually says 40,000 still, but the City, because of the change in [the PRD ordinance], allowed the area to go up 60." (R. at 180.)

Prior to voting on their motion to deny Appellants' site plan Application, members of the Planning Commission attempted to define their decisions on the prior Willow Canyon site plan approvals as "exceptions." (R. at 157.) For example, Planning Commission member Troy Stout stated that in past decisions, the Planning Commission "voted for [60,000 square feet] as an exception." (R. at 157.) However, as shown above, the minutes of each Planning Commission meeting in which a previous Willow Canyon site plan was considered refutes this contention.

After hearing Mr. Church's comments, as well as other comments, the Planning Commission voted to "deny the [Appellants'] application to expand the area of disturbance on their parcel in Willow Canyon beyond the designated 20,000 square feet . . . and that the original Annexation Agreement limited the lot size to 40,000 square feet and the area of disturbance to 20,000 square feet be adhered to." (R. at 184.)

The City Council then considered the Planning Commission's recommendation on September 23, 2008. (R. at 153.) In that meeting, Appellee conceded that the Annexation Agreement controls the allowable area of disturbance on each property within the area addressed in it. (R. at 103.) Like the Planning Commission, the City Council also claimed that the Preliminary Plat was the Attachment B referenced in the Annexation Agreement. (R. at 153.)

During the meeting, Mr. Church stated that it appeared to him that "staff, the Planning Commission and City Council had made a mistake in allowing Mr. Van Leeuwen the 60,000 square feet of disturbance" on his lot within the Willow Canyon project. (R. at 292.) The City Council then voted to "deny the Lynton application of 90,000 square feet of disturbance and instruct the Planning Commission that the City Council will accept up to 60,000 square feet of disturbance" in Appellants' application for building site plan approval. (R. at 292.)

Upon learning that the City Council refused to approve the site plan application, Appellants exhausted their administrative appeal remedies. (R. at 329-330). Appellants then filed a Petition for Judicial Review with the Fourth District Court on October 23, 2008. (R. at 72.)

SUMMARY OF ARGUMENTS

This case is about one issue: whether a city can arbitrarily decided to ignore clear, unambiguous contractual language and its own prior conduct to deny a property owner's site plan application. Appellee's decision to limit the allowable property disturbance to 60,000 square feet had no basis in law or fact, and its stated rationalization for that decision does not comport with the evidence presented so far in this case.

The undisputed facts in this case demonstrate that Alpine City, the Appellee, ignored the written requirements of recorded contracts, repudiated its past conduct towards owners of similarly-situated property, and created a post hoc rationalization for its actions that do not comport with any of the evidence presented to the trial court. Despite this overwhelming evidence, the trial court erroneously granted summary judgment in Appellee's favor after ignoring genuine factual disputes and misapplying Utah's constructive notice law.

The trial court ignored genuine disputes about the existence of a document that Appellee enforced against the Property and whether or not Appellants had notice of this document. Also, the trial court was far too deferential in its treatment of Appellee's administrative municipal decision.

Appellee's interpretation of the Annexation Agreement was not based upon substantial evidence. Appellee ignored the clear language of the Annexation Agreement and instead inserted its own interpretation of allowable lot sizes by referring to a non-existent document. Also, Appellee's decision to limit Appellants' allowable disturbance

area to 60,000 was not based upon any contract, ordinance, or other written document that could legally restrict Appellants' use of the Property.

Appellee's arbitrary decision is confirmed by its refusal to recognize its past decisions to allow higher ratios of property disturbance in neighboring properties. In fact, Appellee applied the Annexation Agreement to a neighboring property in the exact manner in which Appellants requested. Appellee's refusal to apply the same written contracts to property owners in similar situations in the same manner is the epitome of arbitrary conduct.

Appellee's attempt to justify its restriction of Appellant's disturbance area by comparing the total amount of square feet allowed to past property owners has no basis in either fact or law. First, Appellants have been denied the ability to disturb the same total percentage of their property as other similarly-situated property owners. Second, nothing in any contract, ordinance, or other document recorded against the Property allows Appellee to create a limitation on Appellants' use of their Property simply because other property owners requested and received approval to disturb a certain amount of property.

ARGUMENT

The trial court erred when it granted Appellee's Motion for Summary Judgment. Appellee ignored the clear language of the Annexation Agreement and its past precedent when it denied Appellants' site plan; therefore its decision was arbitrary and capricious and should have been overturned by trial court. Instead, the trial court granted summary judgment in favor of Appellee despite the existence of genuine issues of material fact and clear, undisputed evidence that Appellee acted arbitrarily.

I. THE TRIAL COURT DID NOT CORRECTLY APPLY UTAH'S SUMMARY JUDGMENT STANDARDS WHEN IT GRANTED APPELLEE'S MOTION FOR SUMMARY JUDGMENT.

Summary judgment is proper where there is no genuine issue of material fact and where the moving party is entitled to a judgment as a matter of law. Utah R. Civ. P. 56(c). When a court addresses a motion for summary judgment, the court's function is not to weigh disputed evidence or to decide which side has the stronger case. Rather, the court's "sole inquiry should be whether material issues of fact exist." *Draper City v. Estate of Bernardo*, 888 P.2d 1097, 1100 (Utah 1995).

On a motion for summary judgment, the nonmoving party is not required to "prove" its case in order to defeat the motion. Rather, the nonmoving party is only required to submit evidence "sufficient to raise a genuine issue of fact." *Kleinert v. Kimball Elevator Co.*, 854 P.2d 1025, 1028 (Utah Ct. App. 1993). In addition, if there is "any doubt or uncertainty concerning questions of fact, the doubt should be resolved in favor of the opposing party [and] the court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in a light most favorable to the

party opposing summary judgment." *Bowen v. Riverton City*, 656 P.2d 434, 436 (Utah 1982). Finally, the nonmoving party's evidence is to be believed for purposes of the motion, and if there is a conflict in the evidence as to a material fact, the motion must be denied. *See, e.g., Draper City*, 888 P.2d at 1100-01.

In this case, the trial court ignored genuine issues of material fact when it ruled that Appellee was entitled to judgment as a matter of law. (*See* Section II.*F.*, *infra.*) These disputed facts, as well as the undisputed facts that Appellants alleged, demonstrate that Appellee was not entitled to summary judgment in this case. Therefore, this Court should reverse the trial court's decision to grant summary judgment to Appellee as well as the trial court's decision denying summary judgment to Appellants.

II. THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT AND DENYING APPELLANTS' MOTION FOR SUMMARY JUDGMENT.

Appellee's ultimate decision that it would allow no more than 60,000 square feet of disturbance was created out of whole cloth and not based on any ordinance, contract, or other agreement that had any relevance whatsoever to the Property. Also, Appellee's interpretation of the Annexation Agreement was not based upon any relevant or binding authority, for it ignored the clear language of the Annexation Agreement and the applicable city ordinances when it decided to deny Appellants' site plan. Additionally, Appellee repudiated its own past interpretation and application of the Annexation Agreement (that happened to be the exact interpretation that Appellants espouse). Because it ignored clear and unambiguous contract language, the clear language of its

own city ordinances, and its own prior behavior, Appellee's decision was not based upon substantial evidence and was arbitrary and capricious.

Furthermore, the trial court granted summary judgment to Appellee based upon an inappropriate determination of a fact question. The trial court's ruling that Attachment B exists and that Appellants had a duty to inquire ignored key factual disputes and incorrectly decided, as a matter of law, that Attachment B could restrict Appellants' use of their Property.

A. Appellee's decision to deny Appellants' site plan application is reviewed under the substantial evidence standard.

In Utah, "administrative or quasi-judicial land use decisions" are reviewed under the "substantial evidence test." *Bradley v. Payson City Corp.*, 2003 UT 16, ¶ 15, 70 P.3d 47. Substantial evidence is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Id.* (quoting *First Nat'l Bank of Boston v. County Bd. of Equalization*, 799 P.2d 1163, 1165 (Utah 1990)). Substantial evidence is "more than a mere scintilla of evidence[,] though something less than the weight of the evidence." *Grace Drilling Co. v. Bd. of Review of Ind. Comm'n of Utah*, 776 P.2d 63, 68 (Utah Ct. App.. 1989) (internal quotations and citations omitted).

Further, "there is a significant distinction in the degree of deference owed a municipality's land use decision depending on whether it is made while 'the decision-making body is acting in a legislative capacity or an administrative/adjudicative capacity.'" *Ralph L. Wadsworth Const. v. West Jordan City*, 2000 UT App 49, ¶ 16, 999 P.2d 1240 (quoting *Harmon City Inc. v. Draper City*, 2000 UT App 31, ¶ 8, 997 P.2d

321). Review of a municipality's legislative action "is endowed with a presumption of validity, while review of a municipality's administrative/adjudicative decision focuses on whether it is supported by substantial evidence." *Id.* (internal citations and quotations omitted).[1] A review for substantial evidence is not a deferential review, and it goes well beyond simply looking for any evidence to support the appealed finding. Rather, the substantial evidence test is "both a qualitative and a quantitative inquiry," for a court reviews "both sides of the record to determine whether the [decision is] supported by substantial evidence." *Grace Drilling*, 776 P.2d at 68 n. 6. A land use decision "can only be considered arbitrary and capricious if *not* supported by substantial evidence." *Patterson v. Utah Co. Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App.. 1995).

In this case, Appellee was supposed to be acting in an administrative/adjudicative capacity, and not in a legislative capacity, when it denied Appellants' site plan application and substituted the 60,000 square foot disturbance limitation. Therefore, Appellee's decision is not entitled to the presumption of validity endowed upon municipal legislative decisions, and Appellee's decision must be based upon substantial, actual evidence in order to survive judicial review. Appellee did not base its decision upon any documents actually recorded against the Property; rather, Appellee created an ad hoc rationalization for limiting Appellants' use of their property that contradicted both the written contract between Appellee and Appellants as well as Appellee's own previous interpretations of that contract. Appellee's rationalization was not based upon substantial

[1] Appellee conceded that it acted in an administrative capacity when rendering its decision on Appellants' site plan. (*See* R. at 294 (Exhibit A, SECOND DEFENSE (conceding the standard of review to be used by this Court)).)

evidence. Furthermore, the trial court was far too deferential in its treatment of Appellee's administrative land use decision. Because of this, the trial court erred when it granted summary judgment in Appellee's favor.

B. Appellee's interpretation of the Annexation Agreement was not based upon substantial evidence.

Even though Appellee disregarded the terms of the Annexation Agreement (and every other relevant binding authority) when it made its decision to limit disturbance on Appellants' property to 60,000 square feet, Appellee misinterpreted the Annexation Agreement every time it considered it. Appellee's adverse stance to Appellants' proposed site plan was based on its erroneous interpretation of the Annexation Agreement. The language within the Annexation Agreement as recorded and as previously applied is not reasonably capable of the meaning that Appellee gave it.

In Utah, "any ordinance prohibiting a proposed use [of property] should be strictly construed in favor of allowing the use." *Carrier v. Salt Lake Co.*, 2004 UT 98, ¶ 31, 104 P.3d 1208. This same principle holds when interpreting restrictive covenants and easements. *See Panos v. Olsen & Assoc. Const., Inc.*, 2005 UT App 446, ¶ 15, 123 P.3d 816 (stating that a court will resolve all doubts in favor of the free and unrestricted use of property); *Condominium Owners Ass'n v. MSICO, LLC*, 2004 UT App 104, ¶ 17, 90 P.3d 1042 (stating that restrictive covenants are not favored in the law and are strictly construed in favor of the free and unrestricted use of property"). This is because regulations burdening property "are in derogation of a property owner's land." *Carrier*, 2004 UT 98, ¶ 31.

i. The Annexation Agreement does not support an interpretation that limits the size of the Property's lot to 40,000 square feet.

The Annexation Agreement states the following regarding lots within the project area in which the Property is located:

> 3. Location of Building Lots and Density. The owners further agree that regardless of the densities allowed by the above zones that the maximum number of lots shall be as follows:
>
> D. The maximum **number** of residential lots within the Willow Canyon project shall not exceed 5, to be **distributed** within the area as shown on Attachment B to the annexation declaration;
>
> 5. Specific limitations on building and lot **use**. The owners agree that in addition to the usual Alpine building, zoning and subdivision ordinances that they shall be bound to the following limitations:
>
> B. The owners further agree that on lots larger than 30,000 square feet above the High Bench Ditch no more than 50% of the natural landscape will be disturbed and no more than 50% of the lot area will be fenced.
>
> 6. Open Space. The owners agree that a substantial portion of the annexed property is to be kept undeveloped. The owners agree that those portions of the annexation area not included within the proposed lots shall be preserved as natural open space area. ... The open space shall be preserved in one of three manners:
>
> B. The remaining public open space shall be preserved by a Conservation Easement or other approved transfer of development rights. ... The open space to be preserved in this manner shall be: [t]he open space shown on the attachment B of the annexation policy resolution on the Kester, Strang, Redpoint, and Bushman properties.

(R. at 249-252, ¶¶ 3, 5, & 6; emphasis added.) As the language of the Annexation Agreement clearly shows, lots covered by it are not limited in size, but rather limited in maximum number, spatial distribution, and use. Not once does the Annexation Agreement define a required lot size for any parcel of land included within it.

Despite a complete lack of lot size definitions within paragraph 6 of the Annexation Agreement, Appellee interpreted the open space provision as creating a strict de facto lot size limitation, based upon its references to the drawings on the Preliminary Plat, which it maintains is the same as the unrecorded Attachment B. This is untenable. The Annexation Agreement itself stated that Attachment B would be attached to the "annexation policy declaration" rather than the Annexation Agreement. (R. at 253, ¶ 1.) This "annexation policy declaration" has never been recorded.

Additionally, the Preliminary Plat is not labeled as Attachment B or as a "Project Development Plan," which are the two names given to the referenced document within the Annexation Agreement. (R. at 245.) Nowhere does the Annexation Agreement reference the Preliminary Plat. Moreover, the Property is not part of any subdivision, and so a recorded document entitled "Preliminary Plat of Willow Canyon Subdivision" would not bind property outside of the subdivision itself.

ii. No other Documents that affect or burden the Property limit the maximum lot size to 40,000 square feet.

Further, both the definitions and zoning requirements within the Alpine City Ordinances specifically refuse to define a specified lot size for any parcel of land within the zones that include the Property. According to current Alpine City Development Code 3.1.11(24), a lot is "[a] parcel or unit of land describable ... by metes and bounds." The provisions of both the CE-5 zone and the CR-40,000 zone require only minimum lot sizes, but have placed no cap on maximum lot size. (*See* A.C.D.C. §§ 3.4.1 et seq. & 3.5.1 et seq.) In fact, Appellee admitted that prior lot size restrictions were first increased

and then and later intentionally abandoned by Alpine City. (*See* R. at 190.) Therefore, Alpine City's current development ordinances, which are the laws that shape each and every site plan application for non-subdivision lots (*see* A.C.D.C. § 4.14.1(1)), do not impose any lot restriction upon the Property.

Alpine City's zoning requirements for minimum open space within both the CE-5 Zone and the CR-40,000 zone also belie Appellee's position that Appellants' lot is somehow limited in size. Both of these zones require that the areas within preserve open space. However, neither requires that more than any project area set aside more than 50% of its total area as open space.

Neither the Annexation Agreement nor any other Alpine City ordinance addresses or restricts maximum lot size within the Willow Canyon project. Appellee's decision to limit lot size was made on a whim rather than based upon language within a binding ordinance or contract. Appellee's imposition of a maximum lot size upon Appellants' property was arbitrary and capricious.

C. Appellee's decision to allow no more than 60,000 square feet of disturbance was not based on any contract, ordinance, or binding document, and therefore was arbitrary and capricious on its face.

After considering the Appellants' site plan, the Alpine City Council decided to do the following: to "deny the Lynton application of 90,000 square feet of disturbance and instruct the Planning Commission that the City Council will accept up to 60,000 square feet of disturbance." (R at 292.) The City Council did not base this decision upon the Annexation Agreement, which it conceded governs the City's discretion regarding use of the Property. Further, the City Council did not base this decision on any existing

ordinance or zoning requirement. Instead, Appellee decided that it wanted to act a certain way towards the Property and then tried to construct, after the fact, a rationale for doing so.

i. Appellee did not base its decision to limit the proposed disturbance to 60,000 square feet upon the Annexation Agreement, despite its concession that the Annexation Agreement governs the City's discretion regarding use of the Property.

Throughout its argument to the trial court, Appellee simply stated that the document on page 9 of the Record of Proceedings (R. at 246) is the preliminary development plan referenced within the Annexation Agreement without ever confronting the plain fact that nothing on that document supports that statement. Simply stating that a document is something does not make it so, especially when the document itself states that it is something else entirely. Also, stating that a document is something, when nothing within the document supports that it is, in fact, that thing, is the essence of an arbitrary and capricious decision.

There is no "preliminary development plan" recorded anywhere within the Annexation Agreement. Page 9 of the Record of Proceedings is a drawing titled "Preliminary Plat of Willow Canyon Subdivision." The title appears twice on the drawing, both in the upper left hand corner and in the lower right hand corner. (R. at 246.) This drawing does not contain any combination of the words "proposed," "development," or "plan," and includes the word "preliminary" only as part of the title of the drawing. (R. at 246.) This page of the record does not contain any description indicating that it is an exhibit to the Annexation Agreement. (R. at 246.)

Furthermore, the signature block within the Annexation Agreement states that the Agreement is seven pages with two attachments—"annexation plat and development plan also attached as exhibit 'A' and 'B.'" (R. at 240.) Any reasonable person reading this statement would expect, first, that the documents would be labeled as exhibit 'A' and exhibit 'B' and, second, that the exhibits would be placed in the correct order. This is not the case with this Annexation Agreement, however.

There were two independent documents recorded with the Annexation Agreement. Neither document was labeled as an exhibit. The first document was the "Preliminary Plat of Willow Canyon Subdivision" (R. at 246.) and the second was the "Alpine City Annexation Plat." (R. at 235.) These documents were recorded in that same order. (*See* R. at 91, recorded as "ENT 61911 BK 4030 PG 122;" R. at 102, recorded as "ENT 61911 BK 4030 PG 123.") Nothing in the signature block and corresponding order of the documents supports Alpine City's contention that the Preliminary Plat is the development plan referred to in the Annexation Agreement.

Finally, and most importantly, any reasonable person reading the Annexation Agreement from beginning to end would have absolutely no reason to believe that the Preliminary Plat was in any way related to the preliminary development plan that the Annexation Agreement references. Nothing within the Agreement references a Preliminary Plat of Willow Canyon Subdivision. The Preliminary Plat is not labeled with anything else that would indicate that it is something more than what it says it is on its face. Simply put, no reasonable reading of this Agreement supports Alpine City's assertion that the Preliminary Plat is the preliminary development plan.

ii. No existing ordinance or zoning requirement justified or required Appellee to limit Appellants' proposed land disturbance to 60,000 square feet.

According to A.C.D.C. § 2.3.3(1), the Board of Adjustment, and not the City Council, is empowered to grant variances. However, Appellants did not approach the Board of Adjustment for a variance, but rather submitted their site plan to the Planning Commission for approval in accordance with § 4.14.1(1). The Planning Commission only has the power to "review and make a recommendation to the City Council on site plans for buildings not located in an approved subdivision for compliance with Alpine City ordinances prior to the issuance of a building permit." (A.C.D.C. § 2.2.4(4).) Furthermore, nothing within the Development Code authorizes the City Council to wholly disregard governing ordinances and contracts to arrive at some other solution.

The simple fact that the City Council's ultimate decision in this case was less draconian than the Planning Commission's recommendation to limit disturbance to 20,000 square feet does not make Appellee's decision legitimate. There is no legal document anywhere that allows Appellee to set a 60,000 square foot limitation on disturbance. Appellee cannot simply frame its past decisions and precedents as mistakes or exceptions and establish those mistakes or exceptions as the new precedent and imagine that the Annexation Agreement allows for up to 60,000 square feet of disturbance.

iii. Appellee's proferred decision-making process is a post hoc attempt to justify an arbitrary decision.

Appellee's entire explanation of the decision-making "process" that it used to deny Appellants' building site plan application is a post hoc attempt to rationalize arbitrary conduct, rather than an explanation of what Appellee actually did during its consideration of any of the four site plan applications. Appellee's proffered explanation makes no sense for the following reasons:

1. The Annexation Agreement does not place a limit on lot size. (R. at 234-254.)
2. Appellee never attempted to change lot lines or sizes for the five property parcels included in the Willow Canyon project. (R. at 116, 110-111, 108, and 106.)
3. Appellee never considered lot size limitations when it approved the Bushman, Kester, and Van Leeuwen site plan applications. (R. at 116, 110-111, 108, and 106.)
4. When considering the Van Leeuwen property, neither the Planning Commission nor the City Council referred to any drawings that purported to limit lot sizes to 40,000 square feet. (R. at 106, 108.)
5. The Record shows, and Alpine City conceded, that the City Council based its disturbance calculation on a ten acre lot when it approved the Van Leeuwen's area of disturbance. (R. at 106.)
6. Alpine City approved the Van Leeuwen site plan because it proposed to disturb 14% of the total ten acre lot, which the City Council specifically found to comply with the requirements of the Annexation Agreement. (R. at 106.)

7. Appellee did not define a lot size for Appellants' property. (R. at 187-190, 103, 292.)
8. Appellee refused to approve Appellants' building site plan, even though it proposed to disturb only 14% of the total 15-acre lot/parcel (which is the exact ratio that Appellee approved when it approved the Van Leeuwen site plan). (R. at 187-190, 103, 292.)

These reasons all demonstrate that the Annexation Agreement does not support the interpretation that Appellee attempts to give it. Also, they demonstrate that Appellee neither interpreted nor applied the Annexation Agreement in the past the way it purports to interpret and apply it now. Further, as Appellee's past conduct towards the Van Leeuwen property confirms, Appellee completely changed course and decided to operate by a new set of ad hoc rules when it rejected Appellants' building site plan application. Appellee's actions towards Appellants epitomize arbitrary and capricious conduct, yet the trial court completely overlooked these discrepancies.

In this case, Appellee acted as an ad hoc legislative body when faced with an administrative municipal decision. Rather than apply the law as written, the City Council wholly disregarded every governing ordinance and agreement and created a "decision" to fit its immediate desires. Now, Appellee tries to justify its decision by equating the Preliminary Plat with the preliminary development plan. However, the Annexation Agreement itself has no evidence to support such an equation. Rather than deal with this lack of evidence, Appellee rests on its assertion that a document that contains a contradictory, non-inclusive title, that is not marked as an Attachment, and that is

recorded in a non-sensical sequence is the document that "clearly indicates" that Alpine City acted upon substantial evidence. Appellee's action was arbitrary and capricious on its face, as was its subsequent attempt to justify its action with an unsupportable interpretation of a clearly-written contract between the parties. Because Appellee acted arbitrarily, the trial court erred in granting Appellee's Motion for Summary Judgment.

D. Appellee's prior decisions regarding property covered by the Annexation Agreement interpreted and applied the Annexation Agreement in the exact manner that Appellants propose.

When Appellee considered the site plan proposed by the Van Leeuwens, it stated the following:

> **3. Building and Lot Use**: The annexation agreement requires that, "The owners ... on losts larger than 30,000 square feet above the High Bench Ditch have no more than 50% of the natural landscape will be disturbed (sic) and no more than 50% of the lot area will be fenced. **The site plan drawing shows the disturbed and fenced area to be 59,700 sq. ft. which amounts to 14% of the total lot.**"

(R. at 106; emphasis added.) Based upon the language of the minutes, the City Council interpreted the Annexation Agreement as (1) equating lot size with parcel size, (2) requiring that 50% of the parcel/lot be undisturbed, and (3) allowing 14% of that lot to be disturbed and/or fenced. The Planning Commission also required that five acres (half of the ten acre lot) be put into a conservation easement. (R. at 108.) All of these actions were based upon an interpretation of the Annexation Agreement that is no different from the one that Appellants currently argue applies.

Also, Appellee never referred to the Preliminary Plat (or Attachment B) as applying in any way to the Van Leeuwen property. There is no mention of either the Preliminary Plat or Attachment B in the minutes of the Planning Commission and City

Council proceedings. (R. 106, 108.) The method applied by Appellee to determine compliance with the Annexation Agreement's required disturbance ratio clearly ignored any plat drawings and purported square footage disturbance limitations.

Basically, what Appellee had done when considering the first three site plan applications was to apply the correct interpretation of the Annexation Agreement. Then, when Appellants proposed their site plan, Appellee repudiated that interpretation and applied an incorrect and untenable interpretation. Appellee attempted to justify this wholesale change by stating that the past actions were "exceptions." (R. at 157.) However, as the record submitted by Appellee clearly shows, the interpretation applied to the Van Leeuwen property was no exception. (R. at 106.) Rather, the City Council read the language of the Agreement and applied it to a ten acre lot, requiring five acres to be placed in an easement and calculating the total disturbance of the Van Leeuwen site plan based upon a ten acre lot. (R. at 106.) Because that disturbance ratio was under 50%, as required by the Annexation Agreement, Appellee unanimously approved the site plan. (R. 106.)

Appellants' site plan was based upon that exact interpretation of the Annexation Agreement. Furthermore, Appellants' site plan indicated a ratio of disturbance of approximately 14%, which is the exact ratio recognized by Appellee when it approved the Van Leeuwen site plan. (R. at 106.) Appellants own a lot of over 650,000 square feet and have proposed to disturb approximately 90,000 square feet in their site plan. (R. at 190.) Appellants would only be permitted to disturb approximately 9% of their lot under

Appellee's current decision (which is a full 34% less than allowed in the Van Leeuwen site plan).

Appellee openly, willingly, and clearly adopted the correct interpretation of the Annexation Agreement when it approved the Van Leeuwen site plan. Appellee then completely changed course, with no basis in law, and required that Appellants satisfy an ad hoc limitation that Appellee decided to impose upon their Property. Appellee adopted and applied one interpretation of the Annexation Agreement to one landowner, and then rejected that interpretation and applied a completely different interpretation of the same agreement to a second landowner. It is hard to imagine a city making a more arbitrary decision than the one Appellee made in this case. The only thing that changed between the time that Appellee considered the Van Leeuwen site plan and the time that it considered Appellants' site plan was its own view of what it wanted the Annexation Agreement to mean. Allowing such a decision to stand would completely undercut the rule of law. This differential treatment was arbitrary and capricious. Appellee certainly was not entitled to summary judgment and the trial court's decision should be reversed.

E. Appellee's decision to limit Appellants' disturbance area to 60,000 square feet was unjustified and arbitrary, and its attempt to use that decision as evidence of non-arbitrary action fails.

Immediately after attempting to argue that Petitioners' lot size should have been limited to 40,000 square feet, Alpine City then declared that it did not act arbitrarily because its decision to limit disturbance to 60,000 square feet on Petitioners' lot granted Petitioners "the same rights and benefits granted to the other land owners in a similar situation." (R. at 410.) Alpine City then asserted that "[t]his decision was … consistent

with the Annexation Agreement, which gives the City Council the authority to approve minor adjustments to lot lines from the original development plan." (R. at 410.) This reasoning does not comport with the facts included in the Record of Proceedings.

First, the Annexation Agreement states specifically that "the City may approve *minor* adjustments of lot lines, street locations and similar details in the preliminary and final plat approval process *where considered necessary* to more adequately conform to zoning or subdivision regulations or improve the overall design of the project." (R. at 85; emphasis added.) The language of this provision clearly ties any adjustment authorization to one of two triggers—conformance with subdivision regulations or improvement of project design." Also, the provision speaks to lot line "adjustment," not lot size expansion. Finally, the City is only allowed to approve minor adjustments.

The Planning Commission attempted to invoke that clause when it considered Appellants' site plan application on September 16, 2008. (R. at 189.) In the meeting, Mr. Sorensen stated "that the City based the allowance to increase lot size on" the language in the Annexation Agreement "which stated that the City may approve minor adjustments of lot lines." (R. at 189.) The Record of Proceedings, however, does not support Mr. Sorensen's statement. According to the Record of Proceedings, Appellee never referred to this section when it approved disturbance areas between 30,000 and 60,000 square feet for the Bushman, Kester, and Van Leeuwen properties. (*See* R. at 116, 110-111, 108, and 106.) Appellee also did not invoke either of the two required justifications for making "minor" adjustments when it approved the disturbance areas in previous cases. (*See* R. at 116, 110-111, 108, and 106.) Additionally, Appellee has offered no explanation as to why

a 300% increase in allowable disturbance area (from the purported 20,000 square foot limit of the Annexation Agreement to the 60,000 square foot area approved for the Van Leeuwen property) would qualify as "minor," but a 450% increase in allowable disturbance area (from 20,000 to the 90,000 square feet requested in Appellants' building site plan) would not.

For Appellee's argument that it invoked the minor changes clause when it considered the Bushman, Kester, and Van Leeuwen properties to have any validity, it would have had to actually make changes to the lot lines and sizes. However, according to the Record, Appellee never declared that lot lines had changed and it never officially increased lot sizes to 60,000 square feet (to accommodate the Kester and Bushman site plans) and later to 120,000 square feet (to accommodate the Van Leeuwen site plan) to maintain compliance with the Annexation Agreement's disturbance ratio. Also, Appellee never referred to the "minor" changes provision in the Annexation Agreement during any of its prior decisions. Further, Appellee never invoked either of the required triggers that would justify any minor change. Yet now it expects this Court to believe that it followed this process when it considered and approved previous site plan applications. Appellee cannot now attempt to rationalize its arbitrary behavior towards Appellants by claiming that it followed a process that the Record of Proceedings clearly shows that it did not follow and that it simply did to Appellants what it had done to other landowners in previous decisions. Neither is the case. Simply, Appellee acted arbitrarily and the trial court's grant of summary judgment should be reversed.

F. *Because Attachment B was not recorded with the Annexation Agreement, it is void as against Appellants' interest in the Property and the trial court erred when it relied upon it as providing the substantial evidence required to affirm Appellee's municipal decision.*

In its ruling, the trial court stated that "[t]he City's attorney has from the beginning indicated that page 9 was the referenced Attachment B or Project Development Plan referred to." (R. at 608.) The trial court then stated that, "[e]ven if [Appellants] had seen page 9 and assumed it was not Attachment B since it was not labeled in that way, the Annexation Agreement put them on constructive notice that some document of that sort did or likely could exist in direct derogation of their property rights, creating a duty to inquire." (R. at 608.) In essence, the trial court recognized that a document was recorded against the Property and, since Appellee stated that that document was Attachment B (even though nothing on the document itself stated that it was Attachment B), then Appellants had constructive notice of the purported Attachment B and the ad hoc restrictions that Appellee decided to inject into the purported Attachment B. This was in error.

i. <u>When considering Appellee's Motion for Summary Judgment, a genuine issue of material fact exists as to whether or not the Preliminary Plat was, in fact, Attachment B at the time Appellants purchased the Property.</u>

Appellee's argument that the proposed development plan it is attempting to enforce was actually recorded as part of the Annexation Agreement is wholly unsupported by any facts in the Record of Proceedings. Appellants specifically disputed that the Preliminary Plat was Attachment B, and therefore, for purposes of summary judgment, this was a disputed issue of material fact. (*See* R. at 490.)

Also, the Annexation Agreement affirmatively indicated that it was a covenant that would "run with the land and [would be] binding on all successors and assigns to the property" and that it "may be recorded against the property at the Utah County Recorder[']s Office." (R. at 247, ¶ 14.) Anyone reading this provision would reasonably expect to find all other documents relevant to the Annexation Agreement's requirements to be recorded along with the Annexation Agreement in the Utah County Recorder's Office.

The Preliminary Plat drawing was not labeled as "Attachment B" or as a "Project Development Plan," which are the two titles given to the referenced document within the Annexation Agreement. Nowhere within the Annexation Agreement was a preliminary plat referenced. The recorded Preliminary Plat drawing was simply stuck within the pages of the Annexation Agreement without title, reference, or incorporation within the language of the Agreement itself.

Despite these numerous indicators that the Preliminary Plat was not Attachment B, the trial court simply accepted Appellee's representation that the Preliminary Plat and Attachment B were one and the same. The trial court disregarded contradictory factual evidence when considering a motion for summary judgment, and in doing so overstepped its bounds. Also, the trial court specifically ignored Appellant's clear indication that they disputed Appellee's assertion that the Preliminary Plat was Attachment B. Whether or not Attachment B and the Preliminary Plat are the same document is a genuine issue of material fact; as such, it precludes summary judgment for Appellees.

ii. Appellants also dispute that the vague references in the Annexation Agreement to Attachment B gave rise to inquiry notice, and therefore another genuine issue of material fact precludes summary judgment in Appellee's favor.

Despite the fact that Appellants dispute the existence of Attachment B, Appellee created a scenario through which Appellants somehow had notice of the preliminary development plan's purported limitations within the Annexation Agreement. Such a scenario does not exist, especially as a matter of law. The trial court erred when it ruled that language within the Annexation Agreement put Appellants on inquiry notice of the existence of Attachment B.

a. The trial court erred when it ruled as a matter of law that Attachment B could restrict Appellants' use of their property.

According to U.C.A. § 57-3-103, any "document not recorded ... is void as against any subsequent purchaser of the same real property, or any portion of it, if (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and (2) the subsequent purchaser's document is first duly recorded." In Utah, "a bona fide purchaser who perfects his interest takes free of any prior unrecorded interest in the real property." *Boswell v. Jasperson*, 266 F.Supp.2d 1314, 1319 (D. Utah 2003) (quoting *In re Granada, Inc.*, 92 B.R. 501, 503-04 (Bankr. D. Utah 1988)). To qualify for relief as a bona fide purchaser, "purchaser must have obtained a legal title to the property in question." *Gregerson v. Jensen*, 669 P.2d 396, 398 (Utah 1983).

Appellants are bona fide purchasers of the Property, and recorded their interest on November 3, 2006. Furthermore, a document entitled "Attachment B to the annexation policy declaration" (or anything remotely resembling that title) was never recorded. *See*

U.C.A. § 57-3-102(1) (stating that executed documents impart notice "from the time of recording with the appropriate county recorder"). Appellants did not have constructive notice of Attachment B (because no document by that name was ever recorded against the Property) pursuant to Utah's recording statute; it cannot be asserted against them. The trial court erred when it ruled that Attachment B could restrict the Property and when it granted summary judgment for Appellee on that basis.

b. The trial court erred when it ruled as a matter of law that the language of the Annexation Agreement created a duty for Appellants to inquire as to the possible existence and nature of Attachment B.

The language of Annexation Agreement did not give rise to a duty for Appellants to further inquire regarding Attachment B. Constructive notice only occurs "when circumstances arise that should put a reasonable person on guard so as to require further inquiry on his part." *Meyer v. General American Corp.*, 569 P.2d 1094, 1097 (Utah 1977). Certainly, whether or not circumstances arose in this case to put a reasonable person on notice to inquire further regarding a document that was unrecorded and that had not been applied in the past against similar properties is not a question of law to be determined at summary judgment. *See, e.g., Lindner v. Utah Southern Oil Co.*, 269 P.2d 847, 852 (Utah 1954) (stating that "[w]hether the corporation had notice is a dichotomous question of fact: first, whether the notice received would prompt a reasonable man to make further inquiry").

In fact, Appellee's and the trial court's contention that the mere mention of Attachment B within the Annexation Agreement put Appellants on duty to inquire further

regarding Attachment B is incorrect as a matter of law. In *First American Title Ins. Co. v. J.B. Ranch, Inc.*, the Utah Supreme Court specifically endorsed the idea that "a purchaser of real property may rely upon a title which the record shows to be his grantor." 966 P.2d 834, 839 (1998) (internal quotation omitted). The Court continued, explaining that a purchaser "*is not required*, in the absence of notice, *to make an inquiry as to the status of the title outside of that shown by the recorded conveyances* and payment of taxes." *Id.* (emphasis in original). Such a duty to inquire does not arise because "[t]he salutariness of the recording statute is that it provides stability and certainty to land titles on which purchasers must rely." *Id.* The Utah Supreme Court *refused* to "expand the principle of constructive notice from recorded documents" because to do so "might wreak havoc on the recording system of this state." *Id.*

The Utah Supreme Court's prediction of havoc is on full display in this case. Appellants purchased the Property subject to the Annexation Agreement, yet found out, two years after purchasing the Property, that Appellee had decided to enforce other documents that were not recorded against the Property as well as restrictions that were nowhere mentioned in the documents recorded against the Property. Appellee's decision to do so unlawfully restrained Appellants' rights to use and enjoy their Property.

The Preliminary Plat drawing within the Annexation Agreement did not provide actual or constructive notice of anything to Appellants. It is likely that no Willow Canyon project landowner has ever had any sort of notice of Attachment B. Appellee has never produced a copy of a document labeled Attachment B, even though it had the opportunity

to do so in two different Planning Commission Meetings, one subsequent City Council meeting, and the several months of litigation prior to the trial court's ruling.

Appellants did not have constructive notice of any of Attachment B or any of its purported restrictions. The Preliminary Plat drawing was not labeled as "Attachment B" or as a "Project Development Plan," which are the two titles given to the referenced document within the Annexation Agreement. Nowhere within the Annexation Agreement was a preliminary plat referenced. The recorded Preliminary Plat drawing was simply stuck within the pages of the Annexation Agreement without title, reference, or incorporation within the language of the Agreement itself. Additionally, because the Property is not part of any subdivision, no reasonable person researching restrictions on the title of the Property would expect the Preliminary Plat of the Willow Canyon Subdivision to apply to property outside of that subdivision.

Appellee's assertion that Appellants had a duty to inquire beyond the documents recorded against the Property and affirmatively seek out the city and inquire what limitations, if any, applied to the Property is not supported by Utah law. Utah's constructive notice law does not require each landowner to affirmatively approach the city to determine if any unrecorded documents limit his or her use of the property. *See, e.g., Meyer*, 569 P.2d at 1097 (stating that a duty to inquire only arises when a reasonable person would be compelled by the circumstances to inquire further).

Nothing within the Annexation Agreement itself indicated that Attachment B had any effect on Alpine City's maximum allowable lot size. Nowhere in the Annexation Agreement is maximum lot size mentioned, referenced, or implicated in any way. Finally,

the conduct of Appellants' neighboring property owners indicated that there was no maximum lot size, as both Kester and Van Leeuwen expanded far beyond Attachment B's supposed disturbance limit of 20,000 square feet. Therefore, Attachment B cannot be used to limit Appellants' interest in and ability to use their Property. At the very least, whether or not Appellants had a duty to inquire as to what impact, if any, a document entitled Attachment B would affect their Property is a question of fact that was not ripe for summary adjudication.

c. Inquiry would have only confirmed Appellants' interpretation of the Annexation Agreement.

Even if Utah law did require Appellants to make an inquiry, it is unlikely that Appellants would have received any written documentation that limited the size of their property (for, as stated above, Appellees have yet to produce such a document). Also, had Appellants inquired further regarding Attachment B, it is likely that they only information that they would have found would have been information confirming that they could do what they tried to do. It is clear from the Record of Proceedings that Appellee interpreted the Annexation Agreement differently when Appellants purchased their property than it does now. Appellants recorded their interest in the property at issue on November 3, 2006. The previous year, Appellee had allowed 60,000 square feet of disturbance on the Van Leeuwen property based upon its determination that the lot was 10 acres and that disturbance of 14% of that total area was acceptable under the Annexation Agreement. (R. at 106.) Appellee only changed its interpretation and application of the Annexation Agreement when Appellants approached the Planning

Commission in August 2008. So, if Appellants sought out and read the minutes memorializing Appellee's last decision regarding similar property, they would have seen that Appellee did exactly in 2005 what Appellants requested that they do in 2008.

Appellee's argument (and the trial court's ruling) that Appellants had notice of the purported restrictions on their property is not supported by Utah law or by the undisputed facts of this case. Rather than address its own inconsistent application and contradictory interpretation of the Annexation Agreement, Appellee simply ignores or denies it. Further, Appellee would have Utah's courts hold that Appellants are obligated by an undocumented, ad hoc rule rather than unambiguous documents recorded against the property and Appellee's own admitted past conduct towards similarly-situated land owners. Appellee's position is completely untenable, and this Court should reverse the trial court's ruling granting Appellee's Motion for Summary Judgment as well as the trial court's ruling denying Appellants' Motion for Summary Judgment.

CONCLUSION

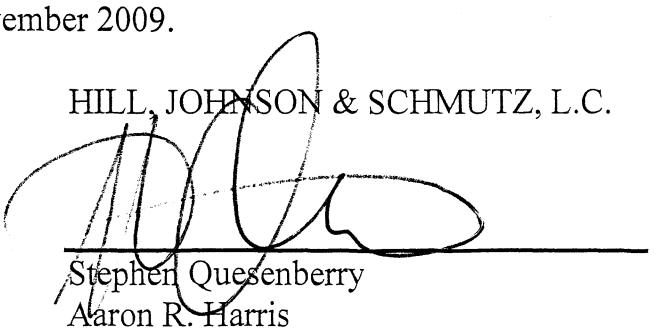
Appellee's decision to restrict Appellants' permissible disturbance area to 60,000 square feet has no basis in law. Neither the Annexation Agreement nor any of Alpine City's ordinances contemplate such a limitation. Appellee's imposition of Attachment B's open space provisions to create a de facto maximum lot size restriction was not based on substantial evidence, but was an ad hoc rationalization for a whimsical decision. Appellee simply ignored its previous application of the same language within the Annexation Agreement.

The trial court erred when it disregarded significant factual disputes regarding the nature and applicability of the purported Attachment B. The trial court erred when it ruled that Attachment B existed and that Appellants had a duty to inquire regarding the unwritten restrictions that Appellee imputed to that Attachment.

For all of these reasons, Appellee's decision to impose a maximum lot size requirement or any disturbance restriction upon Appellants' Property that is less than what the Annexation Agreement plainly allows is arbitrary and capricious and cannot stand. The trial court erred when it ignored all of this evidence and granted Appellee's Motion for Summary Judgment and denied Appellants' Motion for Summary Judgment. Therefore, the trial court's decision granting summary judgment in Appellee's favor should be reversed. Furthermore, because the Annexation Agreement is unambiguous and because Appellee has already interpreted it in the exact way that Appellants request, this Court should reverse the trial court's decision denying summary judgment to Appellants.

Respectfully submitted this 25th day of November 2009.

HILL, JOHNSON & SCHMUTZ, L.C.



Stephen Quesenberry
Aaron R. Harris
Attorneys for Petitioners/Appellants

PROOF OF SERVICE

I hereby certify that, on the 25th day of November 2009, two true and correct copies of the foregoing **BRIEF OF APPELLANTS** were mailed via US Mail to the following:

DAVID L. CHURCH
BLAISDELL & CHURCH, PC
5995 South Redwood Road
Salt Lake City, Utah 84123

James Dunn
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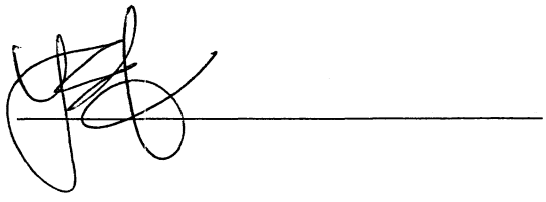


ADDENDUM A

Annexation Agreement

ENT 61311 BK 4030 PG 1
RANDALL A. COVINS
UTAH COUNTY RECOR
1996 JUL 30 10:07 AM FEE .00
RECORDED FOR ALPINE CITY

ANNEXATION AGREEMENT
of the
Freeze/Chrysalis/Sundial/Willow Canyon Annexation Application

As a condition of annexation into Alpine City and pursuant to the annexation policy adopted by the Alpine City Council, the petitioners of the annexation (hereinafter owners) agree as follows.

RECITAL OF FACT

WHEREAS, Alpine City has adopted a policy of annexation for the properties generally known as the Freeze. Chrysalis, Sundial, Willow Canyon, annexations which is attached as Exhibit A to this agreement; and

WHEREAS, the individuals who sign this agreement are the owners or authorized agents of the owners of property within the annexed area who desire annexation and who petitioned the City to annex the property; and

WHEREAS, the City will only annex the property if there is a development plan and agreement which is agreed to concurrently with the annexation as a condition of annexation; and

WHEREAS, portions of the annexation area are subject to inundation from floods arising in the Willow and Preston canyon areas and a flood mitigation plan, which includes the construction of two flood control basins and certain conveyance works has been previously prepared by the City; and

WHEREAS, a portion of the area proposed for annexation lies above the 5220 elevation contour, and a computer analysis of the city's water system in this area shows that there will be insufficient flow to meet the fire flow requirements for those lots situated in the vicinity of the 5220 contour.

WHEREAS, new access roads must be dedicated and bonded for before a development can take place; and

WHEREAS, the undersigned owners of property agree as a condition of being allowed to annex into Alpine City to be bound by the covenants and agreements contained herein;

NOW THEREFORE BASED ON THE ABOVE RECITALS OF FACT AND IN CONSIDERATION OF THE ANNEXATION OF THE PROPERTY REFERRED TO BELOW THE UNDERSIGNED OWNERS AGREE AS FOLLOWS:

1. Project Development Plan The owners consent to and agree to be bound by the

general provisions of the development plan which is Attachment B to the annexation policy declaration.

The owners further agree that all preliminary and final development plans shall substantially conform to the design set forth in the Plan. However, the City may approve minor adjustments of lot lines, street locations and similar details in the preliminary and final plat approval process where considered necessary to more adequately conform to zoning or subdivision regulations or improve the overall design of the project.

The owners agree that all further preliminary and final plans subsequently submitted in support of an application for development approval of the property shall be in substantial compliance with the development plan requirements and conditions of annexation set forth in the annexation policy declaration and this agreement.

2. Zone Classification. The Owners agree and consent that those portions of the annexation area located above the 5220 contour are to be placed in the CE-5 Critical Environment zone. Those portions below that level are to be placed into the CR-1 Country Residential zone.

3. Location of Building Lots and Density. The owners further agree that regardless of the densities allowed by the above zones that the maximum number of residential lots shall be as follows:

A. The Freeze project shall be limited to not to exceed 37 lots, all of which shall be located below the 5220 ft. contour.

B. The maximum number of residential lots within the Sundial project shall be not to exceed 13, all of which shall be located below the 5220 ft. contour.

C. The maximum number of residential lots within the Chrysalis project shall be not to exceed 8, all of which shall be located below the 5220 ft. contour.

D. The maximum number of residential lots within the Willow Canyon project shall not exceed 5, to be distributed within the area as shown on Attachment B to the annexation declaration.

E. The maximum number of residential lots within the Howard parcel shall be 4 and the maximum number of lots within the Dunn parcel shall be 7. A portion of all lots shall be located below the 5220 ft. contour. Two of the Dunn 7 lots may, at the owners discretion, be located on the South end of the East side of Preston Drive.

4. General Construction limitation and timetable. The owners agree that no development construction may begin until 300 North street has been extended to the property and until Alpine Blvd. has connected 300 North with High Bench Road or until Lone Peak Drive or

Preston Drive has been extended from High Mountain Oaks to the subject property. the owners further acknowledge and agree that no more than 20 homes may be constructed until a third road access has been completed. The City reserves the right to restrict construction traffic on 300 North street to certain times of the day. The Owners agree that the rights of ways for all new roads required for the development of the annexed properties shall be dedicated to the City and a bond sufficient to cover the estimated costs of construction of the roads shall be given to the City concurrently with the filing of the annexation plat with the County recorder.

5. Specific limitations on building and lot use. The owners agree that in addition to the usual Alpine building, zoning and subdivision ordinances that they shall be bound to the following limitations:

A. On lots above High Bench Ditch that are smaller than 30,000 square feet no more than 60% of the natural landscape will be disturbed and no more than 60% of the lot area will be fenced.

B. The owners further agree that on lots larger than 30,000 square feet above the High Bench Ditch no more than 50% of the natural landscape will be disturbed and no more than 50% of the lot area will be fenced.

C. No home may be built on lots above the High Bench Ditch that exceeds a height of 25 feet above the natural grade to the highest point of the roof or parapet.

D. The exterior walls all structures within the annexed area shall be constructed of masonry or wood of earth toned color the roofs must be constructed of non-reflective materials.

E. Any wire, chain link, or other form of deer fencing shall not encompass more than one-third of a lot, and shall not be constructed on any lot perimeter and shall have at least a fifteen foot setback from lot boundaries.

6. Open Space. The owners agree that a substantial portion of the annexed property is to be kept undeveloped. The owners agree that those portions of the annexation area not included within proposed lots shall be preserved as natural open space area.
The owners agree that the development rights for the major portion of the designated open space areas shall be conveyed to the public and shall be secured in perpetuity for open space purposes.

The open space shall be preserved in one of three manners:

A. Public open space which shall be deeded in fee to either the City or the U. S. Forest Service, in the City's sole discretion. The property which is to be protected in this manner is the following:

1. The open space shown on the attachment B of the annexation policy resolution on the Freeze, Sundial, and Chrysalis properties.

B. The remaining public open space shall be preserved by a Conservation Easement or other approved transfer of development rights which, as a minimum, shall ensure that the owners of the open space may not subdivide the open space; that the owners of the open space may not build additional structures on the open space except required public infrastructure; that the owners of the open space may not use the open space for grazing and that the open space shall have restrictions acceptable to the City on the use of motorized vehicles including off road vehicles of all types.

The open space to be preserved in this manner shall be:

1. The open space shown on the attachment B. of the annexation policy resolution on the Kester, Strang, Redpoint, and Bushman properties.

The Conservation Easement shall also insure the public access to the trails listed below. The Conservation Easement may preserve the owners' right to develop springs and water rights on the property and the owners rights to dedicate the open space in fee to the City or the U.S. Forest Service in a manner that would give the Owner a tax deduction for the donation. it is hereby acknowledged that the dedication of the development rights is a voluntary act of the Owner and the City gives no compensation for this gift.

The form and general content of the conservation easement shall be determined by the City and the decision as to who shall be granted the easement (City or Forest Service) shall be the sole prerogative of the City.

C. The title to the private open space area shall be conveyed to a home owners association established at the time of first approval of a development plan. Preservation of the private open space area shall be further secured through the recording of an open space preservation easement in favor of the City.

7. Trails. The owners hereby specifically agree that they will dedicate to the public the following trails:

A. The existing trail along the East side of the High Bench Ditch. The trail easement for the High Bench Ditch Trail shall be a minimum of 50 feet in width.

B. A trail in the proximate area of the existing main west-to-east dirt road from the High Bench Ditch up to Willow Canyon.

C. A trail in the proximate area of the existing north-west fork of the above

mentioned dirt road as a secondary access to the main west-to-east trail or an alternative acceptable to the City should be provided.

D. A trail that connects the High Bench Ditch with Preston Way, somewhere in the vicinity of the South border of the Howard parcel.

E. That above same trail shall continue to the north-east along Preston Way and beyond, to connect with the west-to-east trail described in B.

F. A trail easement shall be provided for the deer trail (and any access to it from the south) the runs generally along the far eastern border of the Freeze property, and continuing in a generally north-westerly direction through the Sundial parcel.

G. A trail along the existing road which runs almost due south to the High Bench Ditch trail from the west side of the Lambert water tank.

H. An intermediate North-South trail running along the secondary north south street shown the attachment B to the annexation policy resolution.

Concurrently with the approval of the first phase of any development, a graveled trail head parking area must be provided for a minimum of three vehicles at a location designed by the Alpine City Council to service the trail head access into Willow and Preston Canyon. If the location of the trail head is not on the site of the phase being currently built, the Owner may install a temporary trail head on-site to be used until the final trail head is developed.

8. Water Rights. Pursuant to the provisions of Alpine City Ordinances the owners agree to convey sufficient water rights to satisfy the water use requirement of each lot as shown on the development plan. The Owners shall transfer concurrently with the annexation 55.2 shares of Alpine Irrigation Company Stock to the City, or other water right sufficient to satisfy the requirements of the water policy adopted by the City for annexations.

9. Culinary Water. The Owners agree that all dwellings and other occupied structures are to be served by the City's culinary system. The Owners agree an additional tank located at an elevation above 5400 will be required. The tank shall have adequate capacity for domestic, irrigation and fire flow purposes. The Owners agree that the tank and attendant facilities shall be designed and constructed concurrently with the preliminary and final plans and plats and shall be in place prior to the issuance of any building permits for dwellings required to be served by the tank. The required sizing, location and other particulars will be at the sole discretion of the City. All costs of construction of the tank, and the water lines and other appurtenant facilities, both on-site and off-site, shall be borne by the Owners and conveyed, without cost to the City.

Because of the higher elevation of the annexation area, the new system will function as

a separate pressure zone of the Alpine City system. The Owners agree that to facilitate the added cost for delivery of water to this area the City may establish a cost differential for water service to users of the system.

10. Sewerage Facilities. All lots within the annexation area shall be served by the City's sewage collection and disposal system. The sewage facilities shall be designed concurrently with the preliminary and final plats for the development.

All costs of construction of the sewer line and facilities, both on-site and off-site, shall be borne by the developer and conveyed without the cost to the City.

11. Public Improvements to be Constructed Prior to the Issuance of Building permits. Pursuant to the requirements of Ordinance 93-10 of Alpine City adequate public facilities must be in place prior to the issuance of any building permits upon the property within the annexation area.

12. Concurrent Annexation and Development of Adjacent Annexation Areas Required. The proper development of this annexation area will require that all seven areas (Bennett, Sundial, Freeze, Chrysalis, Dunn, and Howard, and Willow Canyon) be annexed concurrently. However, adequate access to the Sundial Annexation Area requires the developments of he intervening Freeze area road system. Accordingly the Owners agree that a development within the Sundial area will require the prior development of the Freeze road system.

13. Flood Retention Basins and Works. As a condition of annexation the Owners agree to contribute the amount of $1,700.00 per lot for all portions of the area subject to flooding, as set forth on the Flood Mitigation Plan for the area.

Concurrently with the recording of the annexation plat the Owners agree to dedicate to the City of Alpine on a document prepared by the Alpine City Attorney, sufficient property and access to the property upon which two debris basins, each of approximately eight acre feet capacity or the minimum size required to protect for a 100 year flood from Willow Canyon and Preston Canyon can be built.

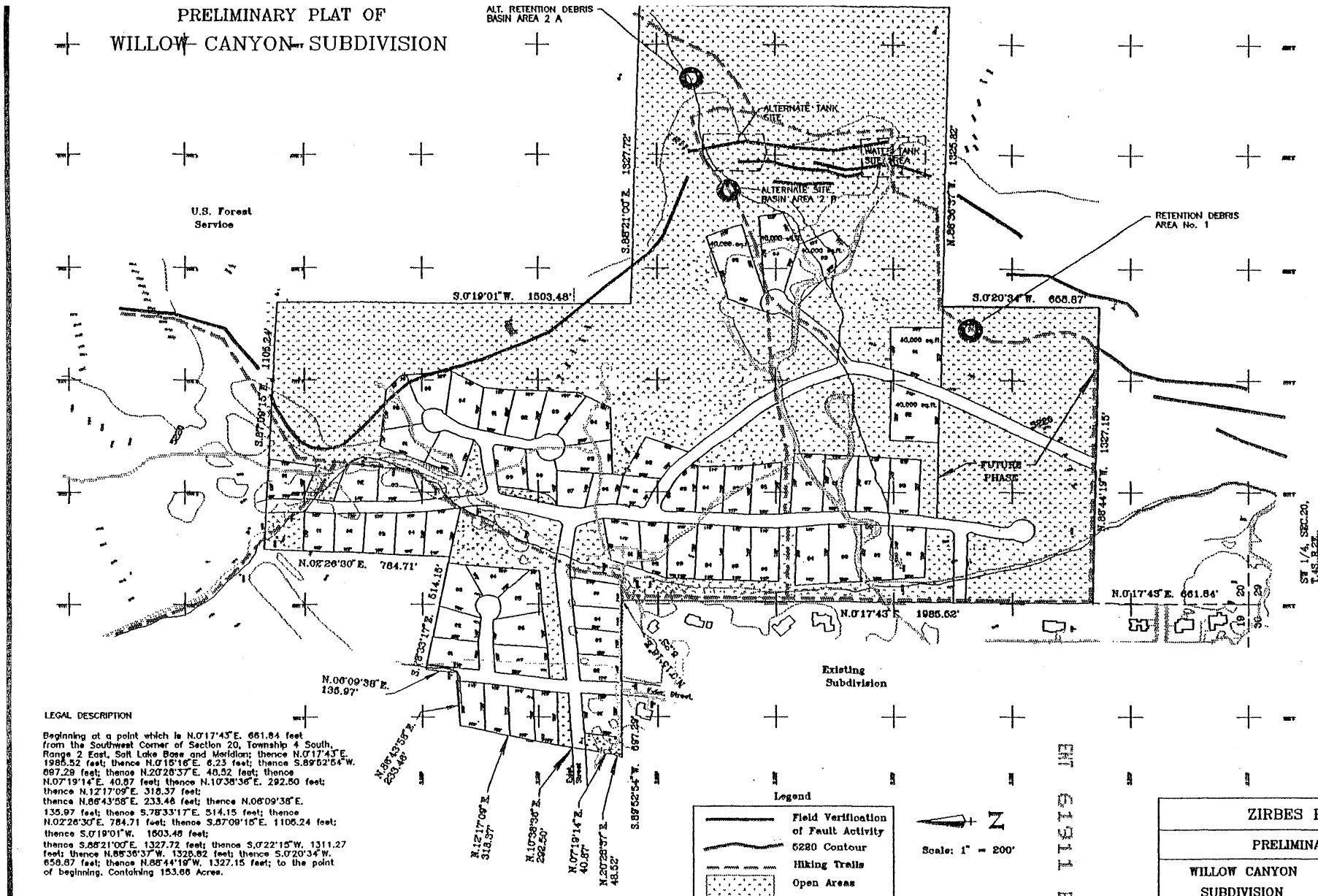
Alpine City may place the basins at any location on the parcels described below provided it is not on an approved building pad. The debris basin servicing Preston Canyon will be located on property owned by Van Dunn described as the E 1/4 of the No. 1/2 of the SW 1/4 if the SW 1/4 quarter of Section 20. The basin servicing Willow Canyon will be located on property owned by Sibley, Kester, Strang, or Redpoint L.C. described as the NE 1/4 of the SW 1/4 and the SE 1/4 of the NW 1/4 quarter of the SW 1/4 quarter of Section 20.

The City of Alpine agrees in the consultation with the Owners, to locate the basins in an area that will cause the least amount of visual damage to the annexed property so long as it does

not impair the safety of the debris basins.

14. Covenants will run with the land. The undersigned owners agree that the covenants and representations agreed to herein shall be covenants that run with the land and shall be binding on all successors and assigns to the property and that this agreement may be recorded against the property at the Utah County Recorders office.

PRELIMINARY PLAT OF WILLOW CANYON SUBDIVISION



LEGAL DESCRIPTION

Beginning at a point which is N.0°17'43"E. 661.84 feet from the Southwest Corner of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian; thence N.0°17'43"E. 1985.52 feet; thence N.0°15'16"E. 6.23 feet; thence S.89°52'54"W. 697.29 feet; thence N.20°28'37"E. 48.52 feet; thence N.07°19'14"E. 40.87 feet; thence N.10°38'36"E. 292.50 feet; thence N.12°17'09"E. 318.37 feet; thence N.86°43'58"E. 233.46 feet; thence N.06°09'36"E. 135.97 feet; thence S.7°33'17"E. 514.15 feet; thence N.02°26'30"E. 784.71 feet; thence S.87°09'15"E. 1106.24 feet; thence S.0°19'01"W. 1503.48 feet; thence S.85°21'00"E. 1327.72 feet; thence S.0°22'15"W. 1311.27 feet; thence N.85°36'37"W. 1326.82 feet; thence S.0°20'34"W. 658.87 feet; thence N.85°44'19"W. 1327.15 feet; to the point of beginning. Containing 153.66 Acres.

Note: All areas not otherwise indicated is dedicated open space with restricted public use and is to be kept in natural state.

Total Acres: 153.66
Willow Canyon = 28 Lots.
(21 Below 5220, 5 Above)
Freeze = 37 Lots
Future Phase = 20 Ac.

ZIRBES ENGINEERING		
PRELIMINARY PLAT OF		
WILLOW CANYON SUBDIVISION	Checked J.Z.	Scale 1" = 200'

ENT 61911 BK 4030 PG 122

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Chrysalis Company (A Utah Limited Partnership)
Joel Kester, General Partner

State of Utah)
:ss
County of Salt Lake)

On Dec 27 ____, 1995, appeared before me Joel Kester, who did swear that he is the General Partner of Chrysalis Company, a Utah limited Partnership, and that the foregoing instrument was signed on behalf of said partnership by authority of the partnership agreement.

My commission expires:
May 24 1997

Notary Public

ENT 61911 BK 4030 PG 12

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Sundial Inc.
Joel Kester, President

State of Utah

ENT 61911 BK 4030 PG 125

County of ~~Utah~~ Saltlake ss

On Dec 27, 1995, appeared before me Joel Kester, who did swear that he is President of Sundial Inc., a Utah corporation and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Directors, and Joel Kester affirms that the resolution is binding and in force on this date.

Notary Public

My commission expires:
Mar 24 1997

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Joel Kester

ENT 61911 BK 4030 PG 126

State of Utah)
:ss
County of Salt Lake)

On Dec 27, 1995, personally appeared before me Joel Kester, who being duly sworn by me did say that he did sign the foregoing instrument.

Notary Public

My commission expires:

May 24/1997

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Troy Robyn Sibley

Candace Cardon Sibley

State of Utah)
:ss
County of Salt Lake)

ENT 61911 BK 4030 PG 127

On December 26, 1995, personally appeared before me Troy Robyn Sibley and CANDACE CARDON SIBLEY, who being duly sworn by me did say that they did sign the foregoing instrument.

My commission expires:
Mar 24/97

Notary Public

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Van F Dunn Jr

ENT 61911 BK 4030 PG 12

State of Utah)
:ss
County of Salt Lake)

On Dec 21, 1995, appeared before me Van F Dunn Jr, who did swear that he is President of Van Dunn Interprises Inc a Utah corporation and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Directors, and Van F Dunn Jr affirms that the resolution is binding and ~~in~~ force on this date.

Sharon L Kearns
Notary Public

My commission expires:
Mar 24 1997

The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Robert Strang

Connie Strang

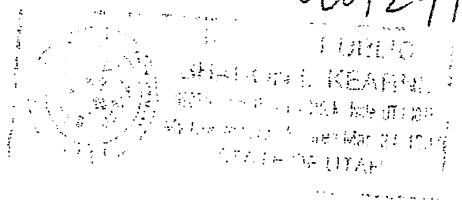
ENT 61911 BK 4030 PG 129

State of Utah)
:ss
County of Salt Lake)

On December 26, 1995, personally appeared before me Robert Strang and Connie Strang, who being duly sworn by me did say that they did sign the foregoing instrument.

My commission expires:
May 24 1997

Notary Public



The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Glen W Howard

The Glen W. Howard Family Trust
by Glen W. Howard, Trustee

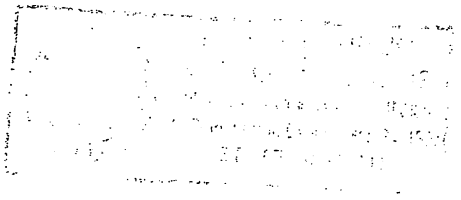
ENT 61911 BK 4030 PG 1;

State of Utah)
:ss
County of Salt Lake)

On Dec 27 _____, 1995, appeared before me Glen W. Howard, who did swear that he is Trustee of the Glen W. Howard Family Trust and that the foregoing instrument was signed on behalf of said Trust by authority of a the Trust Agreement which Glen W. Howard did affirm is current and binding on this date.

My commission expires:
Mar 24/1997

Notary Public



The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Gary Bushman Trust (August 24, 1992)
Gary Bushman, Trustee

ENT 61911 BK 4030 PG 131

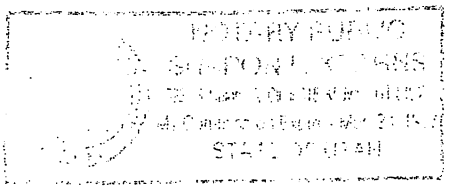
State of Utah)
:ss
County of Salt Lake)

On December 24, 1995, personally appeared before me Gary Bushman who being duly sworn by me did say that he is the Trustee of the Gary Bushman Trust (August 24, 1992) and by the authority of the Trust agreement that he did sign the foregoing instrument for and on behalf of said trust.

My commission expires:

Notary Public

Mar 29 1997



The undersigned Owner of property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the "Freeze/Chrysalis/Sundial Willow Canyon Annexation Application" which compromises seven (7)pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Sundial Inc.
Joel Kester, President

State of Utah)
: ss
County of ~~Utah~~ Salt Lake

On Dec 27, 1995, appeared before me Joel Kester, who did swear that he is President of Sundial Inc., a Utah corporation and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its Directors, and Joel Kester affirms that the resolution is binding and in force on this date.

My commission expires:
Mar 24 1997

Notary Public

ENT 61911 BK 4030 PG 13

CULLEY W. DAVIS NEW OWNER & JIM FREEZ
PROPERTY

STATE OF UTAH
COUNTY OF SALT LAKE
DATED THIS 20TH DAY OF MARCH, 1996

CULLEY W. DAVIS
NAME OF AFFIANT

SUBSCRIBED TO AND ACKNOWLEDGED BEFORE ME THIS 20TH
DAY OF ~~DECEMBER~~ MARCH, 1996.

NOTARY PUBLIC

SHAWN A. PARKER
NOTARY PUBLIC • STATE of UTAH
SUPERIOR TITLE COMPANY OF UTAH
7689 UNION PARK CNTR #110
MIDVALE, UT 84047
COMM. EXPIRES 11-02-99

MY COMMISSION EXPIRES: 11-2-99 RESIDING IN: SLC

The undersigned Owner of record of the property in Utah County hereby accepts the conditions of the proceeding Annexation Agreement of the Freeze\Chrysalis\Sundial\Willow Canyon Annexation Application which compromises seven pages, together with annexation plat and development plan also attached as exhibit "A" and "B".

Redpoint Equity LC
Brent Mitchell, Member

State of Utah)
:ss
County of Salt Lake)

ENT 61911 BK 4030 PG 133

Appeared before me on July 23, 1996, Brent Mitchell, who being by me duly sworn did say that he is the Managing Member Partner of Redpoint Equity, and that he signed this instrument on behalf of said partnership.

Sharon L Kearns
Notary Public

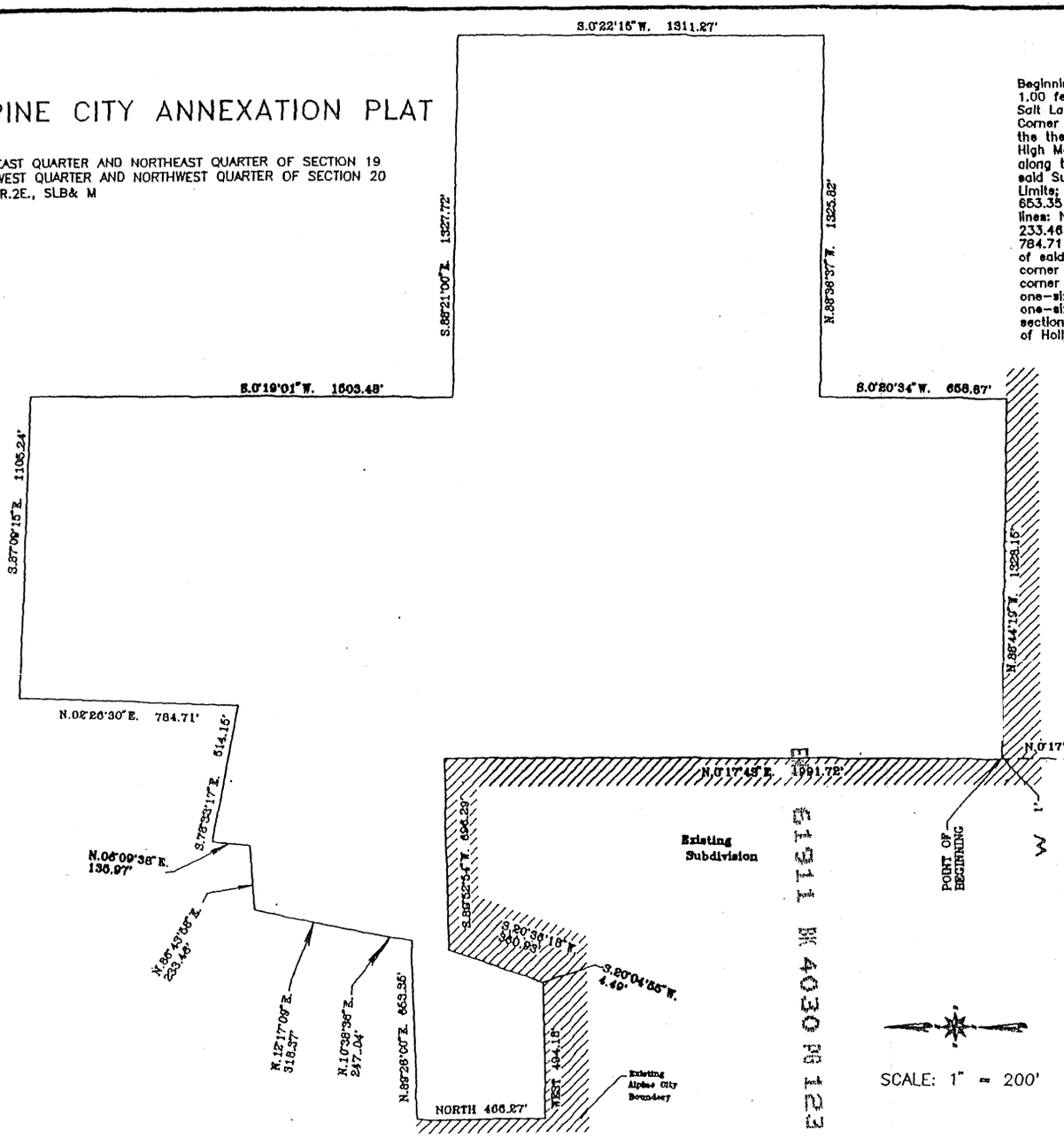
My commission expires:

Mar 24 1997

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. #315, Midvale UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

ALPINE CITY ANNEXATION PLAT

SOUTHEAST QUARTER AND NORTHEAST QUARTER OF SECTION 19
SOUTHWEST QUARTER AND NORTHWEST QUARTER OF SECTION 20
T.4S., R.2E., SLB& M



LEGAL DESCRIPTION OF TERRITORY ANNEXED TO ALPINE CITY

Beginning at a point located N.0°17'43"E. along the Section line 661.86 feet and West 1.00 feet from the Southwest Corner of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian; thence N.0°17'43" E. 1991.72 feet to the Northeast Corner of Lot #7 of High Mountain Oaks Plat "C" Subdivision, as recorded in the office of the the Utah County Recorder; thence S.89°52'54"W. along the north boundary of High Mountain Oaks Plat "C" Subdivision 696.29 feet to a fence line; thence S.20°36'18"W. along the west boundary of said Subdivision, 360.93 feet; thence S.20°04'55"W. alon said Subdivision , 4.49 feet; thence West 494.18 feet to the easterly boundary of Alpine City Limits; thence North along said City Limit boundary 466.27 feet; thence N.89°28'00"E. 653.35 feet to a fence line; thence the following six courses and distances along fence lines: N.10°38'36"E. 247.04 feet, N.12°17'09"E. 318.37 feet, N.86°43'58"E. 233.46 feet, N.06°09'36"E. 136.97 feet, S.78°33'17"E. 514.16 feet, and N.02°26'30"E. 784.71 feet; thence S.87°09'15"E. 1105.24 feet to the west one-sixteenth section line of said Section 20; thence S.0°19'01"W. 1503.48 feet to the West Center one-sixteenth corner of Section 20; thence S. 88°21'00"E. 1327.72 feet to the Center one-quarter corner of Section 20; thence S.0°22'15"W. 1311.27 feet to the the South center one-sixteenth corner of Section 20; thence N.88°36'37"W. 1325.82 feet to the Southwest one-sixteenth corner of Section 20; thence S.0°20'34"W. along the west one-sixteenth section line of Section 20, 658.87 feet; thence N.88°44'19"W. along the northerly boundary of Holly View Subdivision 1328.15 feet to the point of beginning. Area = 159.9616 acres.

ENGINEERS CERTIFICATE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT MAP SHOWING THAT AREA TO BE ANNEXED INTO THE CITY OF ALPINE AS DESCRIBED ABOVE.

DATE _____ ENGINEER _____

APPROVED THIS 27th DAY OF DECEMBER, 1995, BY THE CITY COUNCIL, ALPINE CITY, UTAH.

ALPINE CITY RECORDER _____ ALPINE CITY MAYOR _____

RECORDED NO. _____ STATE OF UTAH, COUNTY OF UTAH
RECORDED AND FILED AT THE REQUEST OF:

DATE _____ TIME _____ BOOK _____ PAGE _____

ENTRY NO. _____ FEE _____

ENT 61912 BK 4030 PG 134
RANDALL A. COVINGTO
UTAH COUNTY RECORDE
1996 JUL 30 10:09 AM FEE .00 BY J
RECORDED FOR ALPINE CITY

ADDENDUM AND AMENDMENT

BY THEIR SIGNATURE BELOW THE PROPERTY OWNERS AGREE TO THE FOLLOWING. AN AMENDMENT TO THAT THE ANNEXATION AGREEMENT FOR THE FREEZE/CHRYSALIS/SUNDIAL/WILLOW CANYON ANNEXATION APPLICATION WITH ALPINE CITY.

PARAGRAPH 1 PAGE 1 IS AMENDED TO READ AS FOLLOWS:

1. Project Development Plan. The owners consent to and agree to be bound by the general provisions of the development plan which is Attachment B to the annexation policy declaration.

The owners further agree that all preliminary and final development plans shall substantially conform to the design set forth in the Plan. However, the City may approve minor adjustments of lot lines, street locations and similar details in the preliminary and final plat approval process where considered necessary to more adequately conform to zoning or subdivision regulations or improve the overall design of the project.

The owners agree that all further preliminary and final plans subsequently submitted in support of an application for development approval of the property shall be in substantial compliance with the development plan requirements and conditions of annexation set forth in the annexation policy declaration and this agreement. The City may consider alternative plans substantially in compliance with the Project Development Plan but reducing over all density.

PARAGRAPH 13 PAGE 6 IS AMENDED AS FOLLOWS:

13. Flood Retention Basins and Works. As a condition of annexation the Owners agree to contribute the amount of $1,700.00 per lot for all portions of the area subject to flooding, as set forth on the Flood Mitigation Plan for the area.

Concurrently with the recording of the annexation plat the Owners agree to dedicate to the City of Alpine on a document prepared by the Alpine City Attorney, sufficient property and access to the property upon which two debris basins, each of approximately eight acre feet capacity or the minimum size required to protect for a 100 year flood from Willow Canyon and Preston Canyon can be built.

Alpine City may place the basins at any location on the parcels described below provided it is not on an approved building pad. The debris basin servicing Preston Canyon will be located on property owned by Van Dunn described as the E 1/4 of the No. 1/2 of the SW 1/4 or the SW 1/4 quarter of Section 20. The basin servicing Willow Canyon will be located on property

owned by Sibley, Kester, Strang, or Redpoint L.C. described as the NE 1/4 of the SW 1/4 and the SE 1/4 of the NW 1/4 quarter of the SW 1/4 quarter of Section 20.

The City of Alpine agrees in the consultation with the Owners, to locate the basins in an area that will cause the least amount of visual damage to the annexed property so long as it does not impair the safety of the debris basins. All locations of the Flood Retention Basins shall be based upon analysis by the Alpine City Engineer. In the event of the final engineering indicates that the locations need to be shifted for effectiveness or safety the City may specify other locations.

[SIGNATURE BLOCK ON FOLLOWING PAGES]

Agreement
March 11,1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Gary Bushman, Trustee 3-25-96
Land Owner
Bushman Family Trust

ENT 61912 BK 4030 PG 136

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29 July, 1996 personally appeared before me GARY BUSHMAN, Trustee of the Bushman Family Trust the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon L. Kearns
NOTARY PUBLIC

Agreement
March 11,1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Troy Rolyer Sibley
Land Owner

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 24 July, 1996 personally appeared before me Troy Rolyer Sibley the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon L Kearns
NOTARY PUBLIC

Agreement
March 11,1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Candace Ardon Sibley
Land Owner

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29 July, 1996 personally appeared before me Candace Ardon Sibley the signer of the above instrument, who duly acknowledged to me that she executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon Kearns
NOTARY PUBLIC

ENT 61912 BK 4030 PG 13

Agreement
March 11,1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Sundial Inc. by Joel Kester
Land Owner

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 11 July, 1996 personally appeared before me Joel Kester, President of Sundial Inc., the signer of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon L Kearns
NOTARY PUBLIC

ENT 61912 BK 4030 PG 140

Agreement
March 11,1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Van F. Dunn Jr.
Land Owner

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29 July, 1996 personally appeared before me Van F. Dunn, Jr. the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon L Kearns
NOTARY PUBLIC

TOTAL P.01

Agreement
March 11,1996

ENT 61912 BK 4030 PG 1

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b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Land Owner

Robert STRANG

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29 July, 1996 personally appeared before me Robert Strang the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

NOTARY PUBLIC

Agreement
March 11,1996

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b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Land Owner
Joel Kester

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29th July, 1996 personally appeared before me Joel Kester the signer of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

NOTARY PUBLIC

Agreement
March 11,1996

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a. That Alpine City shall have the right to relocate the water tank and debris basins to locations required, in the opinion of the City Engineer, for effectiveness or safety, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Chrysalis Company Joel Kester GP
Land Owner

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29th July, 1996 personally appeared before me Joel Kester, General Partner of Chrysalis Company, the signer of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Sharon L Kearns
NOTARY PUBLIC

Agreement
March 11, 1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. Clarified that the City of Alpine shall have the right to place the water tank in a location on the proposed development in an area that is approved by the City Engineer, and

b. The City shall have the right to concider other plans submitted by the land Owners in which the density of the development is reduced.

Glen W. Howard
Land Owner

Beverly June Howard

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29th July, 1996 personally appeared before me Glen W. Howard and Beverly June Howard the signer of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24 1997
STATE OF UTAH

Sharon L. Kearns
NOTARY PUBLIC

Agreement
March 11, 1996

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a. Clarified that the City of Alpine shall have the right to place the water tank in a location on the proposed development in an area that is approved by the City Engineer, and

b. The City shall have the right to consider other plans submitted by the land owners in which the density of the development is reduced.

Land Owner

REDPOINT Equity L.C.
BRENT Mitchell MMP

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

On the 29 July, 1996 personally appeared before me Brent Mitchell, MMP of Redpoint Equities, L.C., the signer of the above instrument, who duly acknowledged to me that they executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24 1997
STATE OF UTAH

NOTARY PUBLIC

Agreement
March 11, 1996

We, the undersigned land Owners of record, agree to the modifications made in a motion by Rob Bateman of the Alpine City Council which:

a. Clarified that the City of Alpine shall have the right to place the water tank in a location on the proposed development in an area that is approved by the City Engineer, and

b. The City shall have the right to concider other plans submitted by the land Owners in which the density of the development is reduced.

Land Owner

STATE OF UTAH
COUNTY OF SALT LAKE

Dated this 20TH day of MARCH, 1996

CULLEY W. DAVIS
Name of Affiant

Subscribed to and acknowledged before me this 20TH day of MARCH, 1996.

A. Pa
Notary Public

SHAWN A. PARKER
NOTARY PUBLIC • STATE of UTAH
SUPERIOR TITLE COMPANY OF UTAH
7050 UNION PARK CNTR #110
MIDVALE, UT 84047
COMM. EXPIRES 11-02-99

My commission expires: 11-2-99 Residing in: SLC

DEBRIS BASIN GRANT OF EASEMENT

The undersigned being all of the owners of the real property described herein, in consideration of Alpine City's consent to annex the property of the undersigned, the undersigned do hereby grant convey and release to the Alpine City an easement and right of way for the location, construction and maintenance of flood control debris basins upon the property described as follows:

E ¼ of N ½ of SW ¼ of SW ¼ of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian.
Tax parcel 11:052:0003

S ½ of the S ½ of the NE ¼ of the SW ¼ of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian.
N ½ of the N ½ of the S ½ of the NE ¼ of SW ¼ of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian.
Tax parcel 11:052:0026 &11:052:0025

S ½ of the N ½ of the NE ¼ of the SW ¼ and the N ½ of the N ½ of the N ½ of the N ½ of the S ½ of the NE ¼ of the SW ¼ of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian.
Tax parcel 11:052:0004

N ½ of the N ½ of the NE ¼ of the SW ¼ of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian.
Tax parcel 11:052:0027

Commencing N 1304.01 feet & E 996.94 feet from the SW Corner of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian; thence N 0°19'4" E 661.34 feet; S 88°50'26" E; 330.19 feet; S 0°19'31" W 661.34 feet; N 88° 51'44" W 330.01 feet to point of beginning.
Tax parcel 11:052:0031

Commencing N 1641.36 feet & E 668.69 feet from the SW corner of Section 20, Township 4 South, Range 2 East, Salt Lake Base and Meridian; thence N 0°18'37" E 330.8 feet; S 88°50'26" E; 330.19 feet; S 0°19'4" W 330.73 feet; N 88°51'5" W 330.15 feet to the point of beginning.
Tax parcel 11:052:0032

This easement is subject to the following conditions and exceptions.

A. This easement shall be for sufficient property and access to the property upon which to construct and maintain two debris basins, each of approximately eight acre feet capacity or the minimum size required to protect for a 100 year flood from Willow Canyon and Preston Canyon.

B. Alpine City may place the basins at any location on the parcels described above provided it is not on an approved

building pad as shown on the proposed development plan attached to the annexation agreement.

C. The City of Alpine agrees in the consultation with the Owners, to locate the basins in an area that will cause the least amount of visual damage to the property so long as it does not impair the safety of the debris basins.

Agreed to and dated this 24 day of June, 1996.

For the Van F. Dunn Jr. property

Van F. Dunn Jr.

By: TRUSTEE

ENT 61913 BK 4030 PG 148

STATE OF UTAH)
)ss.
COUNTY OF Salt Lake)

On the 24 day of June, 1996, personally appeared before me Van F Dunn Jr. the signer of the within instrument, who duly acknowledged to me that he executed the same.

Sharon L Kearns

NOTARY PUBLIC
Residing at: SL

My commission expires:
Mar 24 1997

NOTARY PUBLIC
SHARON L KEARNS
6995 S Union Pk Ctr #315 Midvale UT 84047
My Commission Expires Mar 24 1997
STATE OF UTAH

Agreed to and dated this 24 day of June, 1996.

Gary Bushman, Trustee of the Gary Bushman Trust, & (8-24-92)

~~For Gary Bushman.~~

By:

By:

STATE OF UTAH)
) **:ss**
COUNTY OF Salt Lake)

On the 24th day of June, 1996 Personally appeared before me Gary Bushman, Trustee of the Gary Bushman Trust, dated August 24, 1992 the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. # 315, Midvale, UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

NOTARY PUBLIC

ENT 61913 BK 4030 PG 14

Agreed to and dated this 21 day of June, 1996.

For The Chrysalis Company

By: _____

By: _____

ENT 61913 BK 4030 PG 150

STATE OF UTAH)
)ss.
COUNTY OF Salt Lake)

On the 24 day of June, 1996, A.D. personally appeared before me Jack Keaton and _____ who being by me duly sworn did say, (each for himself), that he, the said his is the ~~President~~ and ~~he, the said~~ _____ ~~is the Secretary~~ of Chrysalis Co., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said They and _____ each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

_____
NOTARY PUBLIC
Residing at: SLC

My commission expires:
March 24, 1997

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. #315 Midvale UT 84047
My Commission Expires Mar 24 1997
STATE OF UTAH

Agreed to and dated this 24 day of June, 1996.

~~For Robert Sibbey.~~ SIC,

Troy Robyn Sibley

By:

Candace Caudon Sibley

By:

ENT 61913 BK 4030 PG 15

STATE OF UTAH)
) ss.
COUNTY OF Salt Lake)

On the 24 day of June, 1996, personally appeared before me Troy Robyn Sibley + Candace Caudon Sibley the signer of the within instrument, who duly acknowledged to me that he executed the same.

Sharon L Kerns

NOTARY PUBLIC
Residing at: SLC

My commission expires:

March 24, 1997

SHARON L KERNS
NOTARY PUBLIC
MY COMMISSION EXPIRES
STATE OF UTAH

Agreed to and dated this 24 day of June, 1996

For Redpoint Equity ~~Inc.~~ LC SK

By: M.M.P.

By:

STATE OF UTAH)
)ss.
COUNTY OF Salt Lake)

ENT 61913 BK 4030 PG 152

On the 24 day of JUNE, 1996, A.D. personally appeared before me BRENT Mitchell and _____ who being by me duly sworn did say, (each for himself), that he, the said _____ is the ~~President~~ BMP, ~~and he, the said~~ _____ ~~is the Secretary of~~ _____, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said BRENT Mitchell ~~and~~ _____ each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Sharon L Kearns

NOTARY PUBLIC
Residing at: SLC

My commission expires:
May 24, 1999

NOTARY PUBLIC
SHARON L. KEARNS
6925 S. Union Pk. Ctr. #315 Midvale UT 84047
My Commission Expires Mar. 24, 1997
STATE OF UTAH

Agreed to and dated this 24 day of June, 1996.

For Robert & Connie Strang.

By: [signature]

By: Connie Strang

ENT 61913 BK 4030 PG 1:

STATE OF UTAH)
)ss.
COUNTY OF Salt Lake)

On the 24 day of June, 1996, personally appeared before me Robert Strang & Connie Strang the signer of the within instrument, who duly acknowledged to me that he executed the same.

[signature]
NOTARY PUBLIC
Residing at: SLC

My commission expires:
3/24/1997

NOTARY PUBLIC
SHARON L KEARNS
[illegible] Main St #[illegible]
My Commission Expires Mar 24 1997
STATE OF UTAH

ADDENDUM B

Minutes of Alpine City Planning Commission and City Council Meetings

Minutes of the Alpine City Planning Commission
September 17, 1996
At issue: Joel Kester's Site Plan Application

If the property is zoned CR, the developer could apply for final subdivision approval to the Planning Commission. Loretta Stevens seconded. Ayes: 6 Nays: 1. Motion passed. Scott Sweeney voted nay saying he was opposed to down zoning.

Sign Ordinance: There were still some changes that needed to be made in the sign ordinance and this item was tabled.

MOTION: Pheobe Blackham made a motion to table the recommendation on the sign ordinance due to lack of time. Scott Sweeney seconded. Ayes: 7 Nays: 0. Motion passed.

Willow Canyon Development - Site Plan - Joel Kester: Mr. Kester's site plan lay within the area on the east side of town recently annexed into Alpine City. A standard road would be built by the developer to access his property. A second access road was also shown on the plan. No lots fronted on the second access road. It's purpose was merely to provide a second access as required by the ordinance. Without the second road, the main access road would be a 1,200 foot cul-de-sac that exceeded the allowed length for a cul-de-sac. The Commission briefly discussed whether it would be better to recommend a variance on the overly-long cul-de-sac and eliminate the second road which would cut through a natural area, or require the second access road. A letter from the fire chief recommended the second access road for fire safety purposes. It was suggested that a gravel service road would provide an emergency access without intruding on wildlife as much as an asphalt road. Dale Porter stated that if the second road was eliminated, the house would need to have in-home sprinklers installed in order to buy response time.

Rod Despain cautioned the Commission that fire fighters could not respond to a situation that put them in undue jeopardy. They needed to have a way to get out.

Mrs. Brewer reviewed the bond letter for the Kester site plan which included roads, a water tank, water lines, etc. The bond totaled $645,300.00.

Mrs. Brewer reminded Mr. Kester that the City could not issue building permits until there was fire protection available to the job site which required water service and a road that could be travelled by a fire engine. Mrs. Brewer said it was her understanding that footings and foundations could be put in with the permission of the building inspector, but nothing could be built beyond that point without fire protection.

MOTION: Scott Sweeney made a motion to extend the meeting to 10:30 pm. Dale Porter seconded. Ayes: 6 Nays: 1. Motion passed. Pheobe Blackham voted nay.

MOTION: Scott Sweeney made a motion to approve the site plan for Joel Kester subject to the following conditions:

1. All storm drain, sewer and road designs must be reviewed and approved by the City Engineer.
2. All road shall be dedicated to the City.
3. The property owner provide the City with 1.97 acre feet of water for the development.
4. The developer would provide a 100% performance bond for all development plus a 10% cash bond.
5. The developer would provide the conservation easement on 15 acres and would retain no development rights, and with the note that two adjacent property owners may put their building lots on the easement.
6. The trails and easements would be shown on the plat.

Pheobe Blackham seconded. Ayes: 6 Nays: 0. Motion passed. Loretta Stevens abstained.

Willow Canyon Phase II - Concept Review: Phase II consisted of 40 lots on 62.68 acres in the area east of Alpine that was recently annexed by the City. The City Engineer had reviewed the plat and made the following recommendations: 1) Include a map showing soil types and their

Minutes of the Alpine City Planning Commission
February 16, 1999
At issue: Gary Bushman Site Plan Application

was approved. Mr. Cruser explained that he owned the two buildings that fronted on Main Street, and the sign w inconspicuous in the original location so moved it out on the lawn. Dale Porter ask. him if it was the same sign that was approved. Mr. Cruser said it was a different sign and was somewhat larger.

After more discussion a motion was made.

MOTION: Alan Jensen moved to approve the sign for DeVirl Cruser as it is presently. Mary Jensen seconded. Ayes: 4 Nays: 0. Motion passed.

5. BUSHMAN SITE PLAN: Gary Bushman owned a five acre parcel on Preston Drive which was one of the five parcels included in the Willow Canyon Annexation. According to the Annexation agreement there would be one building lot of no more than 60,000 square feet on each five-acre parcel and the remainder of the ground would go into a conservation agreement and be left as open space. The actual building lot still needed to be described by metes and bounds and the rest of the parcel would be described in the conservation easement.

The height of the home was a concern. The annexation agreement stated that the home could not exceed 25 feet in height, but it was not specific how the measurement would be taken. Joel Kester had measured his home in the back from the natural grade. Mr. Bushman said he had taken his measurement from the center of the home and it exceeded 25 feet. He asked the Commission to consider varying the standard. There was a lengthy discussion about how the measurement should be taken. Alpine City's Zoning Ordinance specified that the measurement should be taken from the average finished grade to the roof line of the structure.

There was a suggestion that Bushmans simply dig one foot deeper into the mountain to meet the height requirement. Another suggestion was to lower the roof. Ted Stillman noted that three more homes would be built in that area and they needed to define where and how the measurement would be taken.

The next issue that was addressed was the trail that ran through the Willow Canyon development. A portion of the trail would be on the Bushman property. Elaine Compton suggested they walk the area and determine where the trail would go because it needed to be shown on the site plan.

Jannicke Brewer summarized that Mr. Bushman would need to come back to the Planning Commisson with a metes and bounds description of the actual building lot, a description of the conservation easement, identification of the trail, and a resolution of what would be done on the height of the home.

Dale Porter suggested that they use the definition in the zoning ordinance to determine the height requirement but substitute natural grade for finished grade. The ordinance states, "height shall be the vertical distance from the average elevation of the finished grade of the structure to the roof line of the structure."

MOTION: Dale Porter moved to calculate the height of the homes in Willow Canyon Subdivision that come to the City for site plan approval in the following way, "the maximum height of the building shall be 25 feet when measured from the average elevation of the natural grade to the roof line of the structure." The Planning Commission will have the latitude to make a site specific change if needed. Alan Jensen seconded. Ayes: 5 Nays: 0. Motion passed.

MOTION: Scott Sweeney moved to table site plan approval for the Bushman site plan until the following is provided:

1. Metes and bounds description of the building lot.
2. Description of the conservation easement.
3. Identification of the trail.
4. Determination of the height of the building.

Minutes of the Alpine City Planning Commission
March 2, 1999
At issue: Gary Bushman's Site Plan Application

Alpine Boulevard where homes fronted on a gravel trail. Mr. Stillman recommended a 6 foot sidewalk on th orth side of the road.

The trail easement along the west boundary of the development that had been discussed in earlier meetings would not be needed because the trail would go through the property owned by the Utah Valley Land Company.

Dale Porter asked Mr. Swensen if they had submitted proof of ownership of the land. Mr. Whitlock said it had been sent in along with the water rights. The soil types were submitted at the concept phase. Dale Porter recommended that the City waive the environmental impact statement because the property was practically flat with no unusual geological features.
Shane Sorensen advised the developer to leave the church site off the plat if it had already been deeded to the church.

MOTION: Scott Sweeney moved to waive the requirement for an environmental impact statement for Alpine Valley View Estates and grant preliminary approval subject to the following conditions:

1. The centerline radius on Lupine Drive be increased to 150 feet.
2. The location of the fire hydrants be approved by the fire chief.
3. Details of the storm drain system be provided prior to final approval.
4. Comments on redlines be incorporated into the final plans.
5. The trail would be designated on Plat A as discussed.
6. A property agreement with Summit Hills for the road would be submitted.
7. There would be no sidewalk on the north side of Hog Hollow Road next to the open space.
8. The surveyor stamp would be shown on the final plat.

Dale Porter seconded. Ayes: 4 Nays 1: Jannicke Brewer voted nay stating that she was reluctant to grant preliminary approval to a development when some of the information required for preliminary approval was absent.

4. BUSHMAN SITE PLAN: This item had been tabled at the previous meeting until more information was provided, including whether or not the height of the home would conform to the restrictions in the Annexation Agreement. Mr. Bushman's builder, Val Killian, said they had the lot surveyed and the elevation shot at the four corners of the proposed home. The mean elevation was 5303.6 feet. Their calculations showed that the home would be within the 25 ft. height limitation at all the ridges of the house.

Mr. Killian said they had also submitted the description of the lot and conservation easement

as required. Property owner, Gary Bushman, had walked the trail with Elaine Compton and Jannicke Brewer and the trail easement was shown on the plat. Ted Stillman said the bond for the trail was posted when approval was given to Plat 2B of Willow Canyon Subdivision. The road was already in so no bond needed to be posted for improvements. The water policy had been met.

MOTION: Dale Porter moved to approve the Bushman site plan. Mary Jensen seconded. Ayes: 5 Nays: 0. Motion passed.

5. ALAN CUTLER PLANNED RESIDENTIAL DEVELOPMENT/ALPINE COMMONS, A PLANNED EQUESTRIAN COMMUNITY: At the meeting of February 2, 1999 Mr. Cutler had requested a zone change for his property which was denied because the zone change would be contrary to the Land Use Plan. It was suggested that he consider a PRD (planned residential development) on his property. In response to that, Mr. Cutler submitted a sketch plan for his 7.5 acres which lay at the west end of Allegheny Road. The plan showed 9 building lots and approximately 1 1/3 acres of open space. Part of the open space would be a park with a play area and gardens. The remainder would be horse corrals to be used by the residents of the development. Dale Porter informed Mr. Cutler that the ordinance restricted a home owner to one large animal per 10,000 square feet. They estimated that

Minutes of the Alpine City Planning Commission
January 4, 2005
At issue: Bret Van Leeuwen Site Plan Application

Regarding the absence of a buffer zone between private land and wilderness, Ms. Gardner said the Lone Peak Wilderness was established in 1978. At that time they never envisioned houses backing up to the wilderness area, but it was now a problem along the Wasatch Front. She said a buffer zone would have fewer restrictions that the wilderness area.

5. SITE PLAN – NORTH PRESTON DRIVE IN WILLOW CANYON – BRET VAN LEEUWEN: This 10-acre parcel was located at 252 N. Preston Drive next to Joel Kester's home. The parcel came in with the Willow Canyon annexation but was not included as a regular building lot in the subdivision. The parcel needed increased frontage on Preston Drive to qualify as a building lot. Mr. Van Leeuwen and Joel Kester had agreed on a property trade that would give the ten-acre parcel adequate frontage.

PC 1-04-05

According to the annexation agreement, the home could not exceed 25 ft. in height, but the City Council had approved a variance of 4 feet on the height at their meeting on November 23, 2004. As required by the annexation agreement, five of the ten acres would be put into a conservation easement.

Shane Sorensen said he thought the water service and sewer lateral were stubbed to the lot, but they may need another fire hydrant and would need to bond for it. Fire Chief Craig Carlisle would need to review the site plan and approve the location of the fire hydrants.

Regarding trails and a public utility easement, Shane Sorensen said that the public trail access to Willow Canyon was along the access road to the Willow Canyon water tank and debris basin. The road also contained the City's water line. It was his understanding that Joel Kester had prepared the paper work to record the trail and public utility easements.

Jannicke Brewer said the original owner of the property, Dave Taylor, had also signed an agreement stating that the City could put a trail through there. She asked about the construction of debris basins.

Shane Sorensen said the debris basins were covered in the annexation agreement. The City had a blanket easement allowing them to locate a basin wherever needed within that area. He added that the debris basin under construction was actually completed that day.

MOTION: Steve McArthur moved to approve the Van Leeuwen Site Plan subject to the following conditions:

1. The fire chief will approve the location of the fire hydrants.
2. Verify the easements for the trail and City facilities.
3. Property owners provide deeds for the property exchange.
4. Meet the water policy for a 60,000 sq. ft. building envelope.

Dale Porter seconded. Ayes: 6 Nays: 0. Motion passed.

6. SITE PLAN – MAIN STREET VILLAGE – JOHN JOHNSON: Rachel McTeer said that in July 2004 the City approved an amendment of Main Street Village which combined lots 5, 6 & 7 into lots 5 and 6. Mr. Johnson brought in renderings for commercial buildings on lots 5 and 6. They were within the building envelopes, and there were a total of 42 parking spaces for two buildings, which met the requirement. The plans still needed to be approved by the Historic Gateway Committee and go to the City Council for approval.

Jannicke Brewer said she hoped the buildings would be set back somewhat and not sitting on the sidewalk. She asked were the garbage cans would be located and if there would be rear entrances to the buildings.

Minutes of the Alpine City Council
January 11, 2005
At issue: Bret Van Leeuwen Site Plan Application

the Tadje's. Due to the steep slope on 600 East the barriers are necessary to keep vehicles from sliding off.

2. Irrigation Box

City response— The reworking of irrigation systems is a standard part of subdivision requirements. When curb, gutter and sidewalk are installed it is necessary to relocate irrigation lines and boxes. In this case the irrigation system will continue to operate so the irrigation box is necessary.

3. Sidewalk on 100 South

City response—New Subdivisions are required to install sidewalk which includes in front of any existing homes. It is true that the city has paid for some sidewalk on 100 South and eventually would like to install sidewalk all along 100 South. When the home just east of the Tadje's was constructed the developer of Applewood Subdivision installed the sidewalk on 100 South.

4. One way signs

City response—Signage is a normal part of Subdivision requirements. In this case the Tadje's are benefiting from a street that is already there and they only have to install the signs.

Hunt Willoughby said that based on the Tadje's letter that we not require the jersey barriers but that we trim the trees in order to create a visual barrier. Councilman Willoughby felt the Whitby property would be developed soon. John Tadje said there was no purpose in putting in the requested irrigation box and said this will never be used as the ditch then goes under 100 South. Mr. Tadje said there would be two big boxes 30 to 40 feet apart. Shane Sorensen explained this is being required, as there are two users to the west who use the irrigation water. Mr. Sorensen said the sewer extension won't be necessary if the Whitby property becomes a park. Kathy Tadje questioned about why they would be required to incur the cost of the one-way signs.

MOTION: Hunt Willoughby moved that in regards to the Tadje Minor Subdivision that the bond requirements remain as calculated but that the cost for the jersey barriers along 600 East be removed, that the developer trim the trees, that the signage requirement be removed and that the cost for the sewer extension be held in escrow until the need has been established. Kent Hastings seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri and Hunt Willoughby. Nays: 1. Thomas Whitchurch voted nay. Motion passed.

F. VAN LEEUWEN SITE PLAN – WILLOW CANYON. Ted Stillman said that David Taylor sold his lot in Willow Canyon, located north of Joel Kester to the Van Leeuwens who would now like to develop their lot. The lot came in as part of the Willow Canyon Annexation. Below is a list of requirements that the Van Leeuwens will need to meet in order for the Planning Commission to approve and recommend their application.

1. Height: The Annexation Agreement states that, "No home may be built on the lots above High Bench Ditch that exceeds a height of 25 feet above the natural grade to the highest point of the roof or parapet." The Van Leeuwens have received a 4-ft. variance from the Home Owners Association and from Alpine City Council on November 23, 2004.

MOTION: Hunt Willoughby moved to grant the 4 foot height variance on the home located on the 10-acre parcel at the end of Preston Drive in accordance with the Van Leeuwen's building drawings and the 3 foot 6 inch variance on the Barclay and Gail Smith home located on lot 13, Willow Canyon Phase 2B. Thomas Whitchurch seconded. Ayes: Kimberly Bryant, Hata Puriri, Thomas Whitchurch and Hunt Willoughby. Nays: 0. Motion passed.

2. Street Frontage: The current lot has no street frontage and the city requires each of the 5 lots to have a frontage of 60 feet and 90 feet at the setback. The Van Leeuwens are

working with Joel Kester to get street frontage. The site plan shows the proposed layout, which appears to meet the street frontage requirement and staff has recommended that the land deed be recorded with the conservation easement before the building permit is issued.

3. Building and Lot Use: The annexation agreement requires that, "The owners...on lots larger than 30,000 square feet above the High Bench Ditch have no more than 50% of the natural landscape will be disturbed and no more than 50% of the lot area will be fenced. The site plan drawing shows the disturbed and fenced area to be 59,700 sq. ft. which amounts to about 14% of the total lot.

4. Trails and Open Space: The annexation agreement requires that, "The open space shown on attachment B of the annexation policy resolution on the Kester, Strang, Redpoint, and Bushman properties," shall be preserved through a Conservation Easement. "The Conservation Easement shall also insure the public access to the trails listed below." The only trail applying to this site plan is the, "trail in the proximate area of the existing main west-to-east dirt road from the High Bench Ditch up to Willow Canyon."

As for the Conservation Easement, "the form and general content of the Conservation Easement shall be determined by the City and the decision as to who shall be granted the easement (City or Forest Service) shall be the sole prerogative of the City." The proposed conservation easement has over 50% of the land covered and provides a trail easement along the main west-to-east dirt road to Willow Canyon

Ted Stillman said the Planning Commission recommended approval of the Van Leeuwen Site Plan at their meeting of January 4, 2005 with the following motion:

"Steve McArthur moved to approve the Van Leeuwen Site Plan subject to the following conditions:

1. The fire chief will approve the location of the fire hydrants
2. Verify the easements for the trail and city facilities
3. Property owners provide deeds for the property exchange
4. Meet the water policy for a 60,000 sq. ft. building envelope

Dale Porter seconded. Ayes: 6 Nays: 0. Motion passed.

MOTION: Thomas Whitchurch moved to approve the Van Leeuwen Site Plan subject to the following conditions

1. That we verify the easements for the trail and city facilities
2. That the property owners provide deeds for the property exchange
3. That the water policy be met as determined by staff for everything that is not in a conservation easement. Kent Hastings seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Thomas Whitchurch and Hunt Willoughby. Nays: 0. Motion passed.

G. MAIN STREET VILLAGE SITE PLAN. Ted Stillman said that John Johnson is preparing to build on lots 5 and 6 of the Main Street Village Planned Commercial Development. In July of 2004 the Planning Commission approved an amendment to the Main Street plat, which combined building pads 5, 6, and 7 into two pads creating pads 5 and 6. The Planning Commission approved the Site Plan at their meeting of January 4, 2005. Ted Stillman related comments from Soren Simonsen who is the architect that sits on the Gateway-Historic Committee.

MOTION: Thomas Whitchurch moved to approve the site plan for lots 5 and 6 in Main Street Village subject to allowing Soren Simonsen to work with the developer making minor architectural changes to fit in with the Gateway Historical District. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Kent Hastings, Hata Puriri, Thomas Whitchurch and Hunt Willoughby. Nays: 0. Motion passed.

H. WHITBY WOODLANDS SUBDIVISION PRELIMINARY. Ted Stillman said the Whitby Woodland Subdivision consists of 59 lots on about 40 acres. The development is located in the interior area of town between Main Street, 400 West, and 200 North and the lots range in size from 32,000 to 12,000 sq feet. Both Fort Creek and Westfield Ditch run through the property. The Planning Commission

Minutes of the Alpine City Planning Commission
September 16, 2008
At issue: Lynton Site Plan Application

September 16, 2008

Minutes of the Alpine City Planning Commission meeting held September 16, 2008 at Alpine City Hall. The meeting was called to order at 7 pm by Chairman Jannicke Brewer. The following commission members were present and constituted a quorum:

Chairman Jannicke Brewer
Commission Members: Tracy Wallace, Troy Stout, Brad Reneer, Jason Thelin, Steve Cosper, Steve McArthur
Staff: Charmayne Warnock, Shane Sorensen, April Riley, Ted Stillman, David Church
Others: Aaron Holtsclaw, Jim Dunn, Devin Fowler, Ross Welch, Will Jones, Tanner Gillett, Ben Reneer, Evan Schmutz, Mike Howard

The prayer was offered by Jannicke Brewer.

PUBLIC HEARING: TRANSPORTATION (STREET) MASTER PLAN MAP

April Riley said the proposed updates to the Master Street Plan showed a connection between Quail Hollow and Alpine Boulevard. There were also some additional connections and updates showing roads that had been completed since the plan was last adopted.

Shane Sorensen suggested showing the continuation of Canyon Crest Road to Westfield Road as a collector road because of the amount of traffic on it. It would add 6 feet of asphalt to the width of the road.

Jason Thelin asked whether the road from Fort Canyon to the Cove should be shown with a different designation. Shane Sorensen said it wasn't necessary because the main reason for the Master Street Plan was to serve as a basis for the collection of impact fees. The City didn't collect fees for local roads or anything less. Jannicke Brewer noted that the road from Fort Canyon to the Cove was shown as a local road.

There were no other comments.

1. **PUBLIC COMMENT:** Jannicke Brewer said she had looked up the state requirements for day care businesses. The licensing depended on the number of children and number of hours per day. She said she would keep the information on file for future use.

2. **CONDITIONAL USE PERMITS FOR HOME OCCUPATIONS**

Jordan Lake Associates, LLC – 378 River Meadow Drive – Fred Atkinson: Mr. Lake requested a conditional use permit for his business management and consulting business. His services included commercial photography and internet marketing services. No customers would be visiting the home. Approximately 215 square feet would be used for the business.

Double Time Pressure Washing – 798 S. 840 E. Daniel S. Elder: Mr. Elder requested a conditional use permit for his business of pressure washing buildings, homes, decks, driveways, etc. No customers would visit the home. The Planning Commission asked if he would be using chemicals. He said he used a concrete cleaner and a degreaser, which weren't considered hazardous materials. He said he might have one of his friends work with him. The ordinance allowed one employee outside the residing family.

MOTION: Steve McArthur moved to grant conditional use permits for Fred Atkinson dba as Jordan Lake Associates at 378 River Meadow Drive and Daniel S. Elder dba Double Time Pressure Washing at 798 S. 840 E. Steve Cosper seconded. Ayes: 6 Nays: 0. Motion passed.

3. LYNTON SITE PLAN – 136 N. PRESTON DRIVE, WILLOW CANYON AREA: April Riley said the Planning Commission had reviewed the Lynton site plan at their meeting of August 19, 2008 but no recommendation was made because of a number of items that still needed to be addressed. The Lynton site plan was one of five parcels of land that were included in the Willow Canyon annexation, but were not part of the Willow Canyon subdivision. The parcel had originally belonged to Robert Strang. Mr. Lynton had purchased 3 parcels of land which were combined into one legal description. It totaled about 15 acres.

Present at the meeting for the Lynton site plan were the following: David Church – Alpine City attorney; Evan Schmutz – David Lynton's attorney; Devin Fowler – David Lynton's builder; Jim Dunn – attorney representing the Willow Canyon Homeowners Association; and Mike Howard from the Willow Canyon HOA.

Jannicke Brewer said that she had hoped the Lyntons would submit a site plan that showed a reduced area of disturbance, but it appeared they were looking at the same site plan that was submitted at the meeting of August 19, 2008. It showed an area of disturbance of approximately 90,000 square feet.

David Church said Ted Stillman had asked him to review his understanding of the Annexation Agreement and what the agreement had intended to accomplish. Mr. Church said there were issues. First, what did the documents intend to accomplish, and second, did they accomplish the intent and was it enforceable?

David Church said it had been the intent of the documents that the agreements would be enforceable against later purchasers and that they would run with the land. He said that, as he understood it and based on his memory, it was the intent of the documents that the City acknowledge there were five separate owners who held five distinct parcels of land, which were included in the annexation. Because it was the intent of the City to discourage large, estate lots on the foothills, the intent of the document was to limit the lot size within each parcel to 40,000 square feet. As a compromise to the parcel owner who didn't want to just give away the rest of the parcel, the City agreed that the remainder of the parcel could be held in private ownership under a conservation easement. In addition, there was language stating that the entire parcel could not be fenced and there was a limit to the area that could be disturbed. Of the 40,000 square-foot lot, only 50% could be disturbed. The remainder of the property would be preserved through an open space conservation easement which the landowner could keep in private ownership, and keep people off it, but not disturb it. To that end, there was an exhibit that showed 40,000 square-foot areas with the remainder of the land in open space in a conservation easement. Mr. Church said it was never the intent of the City that the 40,000 square-foot parcels would be exactly where they were shown because the property owners would have to adjust for roads, etc. Three of the five parcels were already built on so one could see where the homes were in comparison to the original lot lines. Some boundary line adjustments had been made to create the fifteen-acre parcel for the Lyntons.

David Church said that whether or not the City had accomplished those intentions might be decided by a judge. He said that at some point the City had allowed the lot size to go up to 60,000 square feet, and that the last site plan for Van Leeuwens had been allowed to have an area of disturbance of 60,000 square feet. Mr. Church said the PRD Ordinance had been amended to increase the maximum lot size from 40,000 square feet to 60,000 square feet. The latest version of the PRD Ordinance had no upper limit on the lot size.

David Church said that if it went to court, one of the issues would be whether the City had waived their right to enforce the Annexation Agreement because of previous decisions wherein they allowed an increase in the area of disturbance. He said that two parties to an agreement could agree to change it, but there were more than two parties to the Willow Canyon Annexation Agreement.

Shane Sorensen said that the City based the allowance to increase lot size on page 2 of the Annexation Agreement under item 1) Project Development, which stated that the City may approve minor adjustments of lot lines for roads, etc

Jannicke Brewer said that making an allowance from 60,000 square feet to 15 acres was not minor

David Church said that as a matter of procedure, the Planning Commission should make a decision so the applicant could move forward and have their due process

Evan Schmutz said he appreciated the opportunity to meet with staff several weeks ago and review the history of Willow Canyon He said the Lynton's position was that the Annexation Agreement did not provide the limitation suggested by the City He said that paragraph 5 item B stated that on lots larger than 30,000 square feet above the High Bench Ditch, no more than 50% of the natural landscape would be disturbed, and no more that 50% of the lot area would be fenced The Lynton lot was clearly larger than 30,000 square feet He said "lot" was the word used, but there was no definition of what a lot was Mr Schmutz said that, with respect to the City, they hadn't followed any aspect of the agreement The area of disturbance should have been 20,000 square feet but they moved it up to 60,000 square feet with no legal agreement or ordinance They also allowed more than 60,000 square feet on the Kester lot to be disturbed He said he felt the Lyntons had complied with every request. The limitation of 60,000 square feet was not found in any legal document or ordinance There was nothing that defined what a "lot" was Since Mr Lynton had combined several parcels into a 15-acre lot, he should be able to disturb up to half of 15 acres However, Mr Lynton's intent was to disturb about 90,000 square feet, then reseed and restore it. He said it was his feeling that there was no legal basis for the City to require anything less than that He said he was not implying a threat, but he did believe the Agreement needed to be tested if the Lynton's application was not approved If a court ruled that the restrictions were not valid none of the property owners would have to comply with them

David Church said that in the Annexation Agreement on page 2 Item 3 D, it said that "The maximum number of residential lots within the Willow Canyon project shall not exceed 5, to be distributed within the area as shown on Attachment B to the annexa ion declaration." On page 4 it indicated that all the area shown as open space on Attachment B would be preserved with a conservation easement He said that explained where the 40,000 sq ft lot limitation came from, but a late comer might read it differently Without Attachment B, the document made no sense at all

Jim Dunn represented the Willow Canyon homeowners association. He said there were a handful of property owners in the beginning, all of whom participated in the Annexation Agreement The property under discussion was previously owned by Strang who sold it to Pen and Ink He said Pen and Ink entered into an agreement with Joel Kester that the restrictive covenants of the subdivision would be obeyed They were filed after the annexation. To say that there were no records other than the Annexation Agreement was not correct Mike Howard had presented those documents to the Planning Commission along with the boundary line agreement between Kester and Pen and Ink. Mr Dunn said everyone was entitled to due process If the system dictated that they start down this slippery slope, everyone could come in to makes changes on their lot. He said the current homeowners were content with what they had, but if agreements were found invalid, the City may see all kinds of applications

Jannicke Brewer said there other items that would need to be addressed such as hazards and driveway, but for that evening they needed to make a motion on the area of disturbance

There was a discussion about the area of land disturbed on Kester's property Shane Sorensen said that not everything with the outline of Kester's lot had been disturbed

Jannicke Brewer said that Joel originally disturbed 20,000 square feet, but it went beyond that

David Church said Joel Kester disputed that he disturbed more than what was allowed.

Devin Fowler asked if land would be eliminated from the disturbed area if it was revegetated. Jannicke Brewer said no.

Mike Howard said there were major areas in the 60,000 square feet belonging to Joel Kester that had never been touched. He said the actual area of disturbance was just under 30,000 square feet. On other property they had allowed homeowners to move their landscaping around natural vegetation.

There was a discussion about the Van Leeuwan property. Jannicke Brewer said that 60,000 square feet were disturbed.

David Church said the Lyntons were asking to disturb 90,036 square feet. He said the City could either allow them to disturb 90,036 square feet with the remainder in a conservation easement, or they could go to court and open the possibility for them to fence the entire 15 acres.

Evan Schmutz said he didn't completely agree with David Church. They weren't trying to say, "you do it our way or else." He said none of the lots had complied with the annexation agreement except for the Bushmans. He said that what the City had done was grant approvals based on unwritten policy and tradition. The ordinance did not limit the size of a lot. He said he did not intend to present his position as a threat. His intent was to present what the Lyntons had applied for. A decision to reject their application was not based on any legal document.

Brad Reneer said he could see where David Church found his interpretation, and said he interpreted it the same way. He said it was unfortunate if Pen and Ink was not aware of the interpretation of all the documents when they invested in the property. He said the Planning Commission may have made an error in stretching the provision that allowed moving lots for minor adjustments, but he didn't want to make the same mistake. He said that he thought it would be reasonable to allow the same area of disturbance that they had approved for the Van Leeuwans.

Troy Stout said it was unfortunate the information had been interpreted in such a way to allow people to expand beyond the restriction. People in this community valued the hillsides, and they had entrusted the governing bodies to protect it. He said that in this case, if there was ambiguity in the documents, he felt it was the Planning Commission's responsibility to define the intent of the agreement.

Brad Reneer asked Devin Fowler if the Lyntons would consider shortening the driveway and moving the house down.

Devin Fowler said the driveway is long because of the slope The retaining walls were there for mud flow and they were 8 to 10 feet each.

Brad Reneer asked if there was some way to reduce the area of disturbance.

Gary Bushman said he was not so concerned about the Planning Commission remedying past errors and giving them 60,000 square feet. He said that when he signed the open space agreement, he understood that there would not be a home built behind his home. He said it was pretty clear that the area behind his home was designated as open space. He donated the road to allow other people to have access to their lots. He said that in addition, the City worked with him to designate the trail. He said he was okay with the need to move the trail, but he didn't want it in his front yard He said that the Van Leeuwan site plan hadn't impacted anyone and issues weren't raised But this proposal
would impact him and the Andersons and other groups. He said he recognized there was an error made on the Van Leeuwan site plan, but it hadn't impacted anyone.

Mike Howard represented the homeowners association and said that one of the problems with the Lynton site plan was the area of disturbance He felt that if the home was moved slightly, the area of disturbance could be minimized Another issue was height. The parking area was 15 feet above natural grade It was higher than the scrub oak The top of the house would be 45 feet over natural grade If they moved the house into the hollow, it would reduce the area of disturbance and reduce the height of the house

MOTION: Troy Stout moved to recommend to the City Council that they deny the Lynton's application to expand the area of disturbance on their parcel in Willow Canyon beyond the designated 20,000 square feet to 90,036 square feet, and that the original Annexation Agreement limiting lot size to 40,000 square feet and the area of disturbance to 20,000 square feet be adhered to Steve McArthur seconded Ayes 3 Nays 3 Troy Stout, Steve Cosper and Steve McArthur voted aye Jannicke Brewer, Brad Reneer and Jason Thelin voted nay Tracy Wallace voted aye to break the tie Motion passed

Tracy Wallace said he agreed with original intent of motion, adding that when the issue came to the Council he wanted to look at the records when the Van Leeuwen and Bushman site plans were approved to understand why they were granted larger areas of disturbance

Jannicke Brewer said that since both the Van Leeuwens and Bushman's areas of disturbance were expanded, she felt they could accept an area of disturbance of 60,000 square feet for the Lyntons

4. DAVID'S COURT, PLAT D MINOR SUBDIVISION – CONCEPT, PRELIMINARY AND FINAL. Plat D of David's Court consisted of 3 lots on approximately 5 acres located at 500 E Healey Boulevard in the CR-40,000 zone

Ross Welch said the LDS Church wanted to purchase lot 3 in order to build a chapel The other two lots would be residential building lots

Shane Sorensen said there would need to be a boundary line adjustment with Highland City because a small portion of the plat was in Highland The developers historically took care of the boundary line agreements rather than the City

Jannicke Brewer said she appreciated the trail shown along the bottom of lot 3

Jason Thelin asked if there was any way to connect the trail in Alpine Canyon Crest Estates to the trail in Healey Heights

Jannicke Brewer said the trail was not part of the David's Court subdivision and the City couldn't require it, but they could ask for it

Shane Sorensen said that if there were a trail, it would need to be an easement because the lots needed to retain 40,000 square feet to remain legal

Steve McArthur noted that it would be a nice place for a trail because there was an abandoned ditch there

MOTION: Steve McArthur moved to grant concept and preliminary approval to David's Court, Plat D minor subdivision, and recommend the City Council grant final approval subject to the following conditions

1 The City's water policy be met
2 A bond be provided for the required improvements
3 The fire chief approve the location of the fire hydrants

4. There be a five-foot combination sidewalk along Healey Boulevard.

Brad Reneer seconded. Ayes: 5 Nays: 1. Steve McArthur, Jannicke Brewer, Brad Reneer, Jason Thelin, Troy Stout voted aye. Steve Cosper voted nay, saying he did not like the layout. Motion passed.

5. WILL JONES SITE PLAN – 53 N. MAIN: Will Jones had submitted a commercial site plan for the existing house located at 53 N. Main in Alpine. The Planning Commission had previously approved a change of use from residential to commercial, but had not approved a site plan pending submittal of a site plan and parking plan.

April Riley said the area in the attic and the basement did not meet the requirements for commercial space because the ceilings were too low so it wasn't included in the calculations for parking. The ceiling had to be at least 7.5 feet high and the highest point in the attic was under 7 feet. Based on 1000 square feet on the main level, there would need to be 4 parking spaces as shown on the plan. There was a handicap stall in the car port.

Jannicke Brewer said that Section 3.24.4 of the Development Code allowed the Planning Commission to recommend an adjustment in the number of parking spaces in special circumstances.

MOTION: Steve McArthur moved to approve the parking plan for 53 N. Main with 4 parking stalls, noting that the attic and basement do not meet building code requirements for commercial space, and could not be used as office space. Troy Stout seconded. Ayes: 6 Nays: 0. Motion passed unanimously.

6. TRANSPORTATION MASTER STREET PLAN: The Planning Commission reviewed the updated Master Street Plan, along with some additional changes proposed by Shane Sorensen.

MOTION: Steve McArthur moved to recommend approval of the updated Transportation (Street) Master Plan Map with the following changes:

1. 100 south be a designated as collector road.
2. Show a connection between Watkins Lane and Country Manor Lane.
3 The connection between Canyon Crest to Westfield Road be designated as a collector road.
4. Add a connection from Alpine Boulevard to Quail Hollow.
5. Show a second connection from Blackhawk Lane to 600 East.
6. Update the map to reflect the roads that have been completed including Westfield Road, 200 North, 400 West and Heritage Hills Drive.
7. Realign Whitby Woodlands Drive to match the existing portions of the same road.

Steve Cosper seconded. Ayes: 6 Nays: 0. Motion passed.

7. WIND ENERGY CONVERSION SYSTEMS ORDINANCE: April Riley said the City had received a couple of applications from private residents to build windmills to generate electricity. Since Alpine City didn't have an ordinance that specifically addressed windmills, staff had been processing them as an ancillary structure on the counsel of David Church. But as more applications for wind towers were received, staff thought it would be good to have an ordinance that specifically addressed wind energy conversions systems. A copy of Sandy City's ordinance and South Jordan's ordinance were included in the packet.

Steve McArthur suggested they also look at an ordinance for solar power.

Tracy Wallace said he'd heard Spanish Fork had trouble getting into the grid with the power company, and asked what Rocky Mountain's position was on the wind towers.

Shane Sorensen said Rocky Mountain had talked to them and they were very much in favor of them.

April Riley said Sandy's ordinance was very simple. It required a fall zone, which was that the setback for a pole had to be equal to the height of the pole. South Jordan had a lot size requirement but no restriction on the height.

Brad Reneer said he would like some information on the decibel level of the towers.

No action was taken and the issue would be further studied.

8. APPROVE MINUTES OF SEPTEMBER 2, 2008

MOTION: Steve McArthur moved to approve the minutes of September 2, 2008 as written and adjourn. Steve Cosper seconded. Ayes: 6 Nays: 0. Motion passed

The meeting was adjourned at 9:15 pm.

Transcript of a portion of the tape of the Alpine City Planning Commission
September 16, 2008
At issue: Lynton Site Plan Application

ALPINE CITY PLANNING COMMISSION MEETING – SEPTEMBER 16, 2008

Transcript concerning the David Lynton Site Plan in Willow Canyon

Present at the meeting were:

Planning Commission Chairman: Jannicke Brewer
Commission Members: Troy Stout, Steve Cosper, Jason Thelin, Tracy Wallace – City Council representative, Brad Reneer, Steve McArthur.

Staff: Ted Stillman – City Administrator, Shane Sorensen – City Engineer, David Church- City Attorney, April Riley – City Planner, Charmayne Warnock – Planning Commission Secretary.

Others: Evan Schmutz – David Lynton's attorney, Devin Fowler – David Lynton's builder, Jim Dunn – attorney representing the Willow Canyon homeowner association, Mike Howard – president of the Willow Canyon homeowner association.

Jannicke Brewer
The Lynton site plan. Who is introducing that one?

April Riley
This is the Lynton site plan that came -- I think it was in August at our meeting. Uh, it's at 136 North -- should actually be Preston Drive, not Bald Mountain Drive, I apologize. This is one of the five parcels that was included in the annexation for Willow Canyon but not part of the subdivision. It is about 15 acres in the CR-40,000 zone. As this is not in a subdivision, the site plan has to come to Planning Commission for recommendation to City Council. Um. As you'll recall at our last meeting there was several items on a list that were taken care of. The items you see here, uh, the ones that were taken care of were removed. I think there was probably two or three that had been taken care of. There was uh, oh, the fire chief did come in today but it was when I was gone so he did not get a chance, but I'm pretty sure he looked at the previous one. I don't think anything has changed so it should be okay but he will still verify that the location of the fire hydrant is sufficient and that the width of the road is acceptable to him. So I don't know what else you want me to say or do you want to take it from

Jannicke Brewer
Whatever you want to say. That's fine. Before we start as we got several here. Let's make sure we know who is participating here. We have our City Attorney, David Church here and from the Lynton we have Devin Fowl, right?

Evan Schmutz
My name is Evan Schmutz I'm uh.

Jannicke Brewer
OK I knew it was different like from last time. OK and

Evan Schumtz

My associate was here last time.

Jannicke Brewer

K. Thank you. And Mike do you want to introduce whose you got with you. (unintelligible) Jim Dunn? K I hope we get this straight. Now as you do know that as we record a meeting, anytime you want to – you have to come up to a mic and identify yourself.

Well looking at the plan after we discussed this last time, I was hoping today that we would have a new plan that had reduced the area of disturbance but it has not been. It's essentially what we looked at last time. So it seems like the biggest question is still understanding what the area of disturbance should be. And uh, we've all read like that what I feel uh, and I think what Planning Commission what it says in the uh annexation agreement that was 4 uh 40,000 at that time and went up to 60,000. 30 uh 50 percent could be disturbed. And that's our discussion. And David, can we turn the time over to you first please?

David Church

Yes. Thanks for the invitation to your meeting. Always glad to come and get beat up. I uh, Jannicke and Ted asked me to go through the uh my understanding of what the Annexation Agreement and the uh Annexation Policy Declaration that was adopted back in 1996 were intended to accomplish and what they actually did accomplish, and hopefully that helps you in your application of the current City ordinances and those agreements to this particular site plan. Uh, it's always interesting when you look back 12 years later as to something in writing to see if you actually accomplished what was intended.

To me there are two issues on this. First is I can tell you what the documents were intended to do. And then the second question always is, did the documents actually accomplish that and is that enforceable against a later owner of the property, which, of course, is a question not for us but may eventually be a question for some district court judge because we're not dealing in this case with the original signer of the agreement but with a purchaser of the signer of the agreement that wasn't a party to the agreement.

Let me just start with the intent of the document. First the documents, the Annexation Agreement and the Annexation Policy Declaration were intended to be enforceable against later purchasers. They were intended to be covenants that would run with the land. That was one of the reasons why they were recorded with the county recorders office. And the hope and intent of Alpine City at that time and the signers of the agreement was that they would be able to enforce it against later purchasers. The intent as I understand it from the agreement, and frankly from my memory since I was involved in this as was Jannicke at the time, and maybe others, as to these five lots was to accomplish a couple of basic purposes and I believe that the agreement accomplished those. Mr. Schmutz and I had a discussion about this and he may have some differing opinion on it, but the intent was this: the City acknowledged at the time that these five lot owners held five distinct parcels they wanted to annex into the City. The City's policy at that time was to not -- to discourage and if possible to not allow large estate lots on the foothills. And

so to that end the City agreed that each one of these five parcels would be entitled to one lot. The intent though was to limit those lots to the equivalent of a 40,000-square-foot building lot. So as you notice the Attachment B that's referred to, which is the attachment to the Annexation Policy Declaration, actually identified five 40,000-square-foot building lots which were intended to be pads. As a compromise to the applicants who did not want to give away their property to the City or other people, at that time we agreed that the remainder of the property that they owned in these five distinct parcels could be held in uh, could be held in private ownership if they wished, but would be subject to a conservation easement which would limit them in their ability to develop the property and to strip the natural vegetation off the property.

In addition to that, the Annexation Agreement and the Policy Declaration had some language in it that I don't think is controversial at this time about where fences could be. The intent was, for example in this case, the whole 15 acres couldn't be fenced off, but there was a limitation on where privacy fences could be or not be, and there was a further limitation as to area of disturbance. So the intent was, for example, that we would have an identified 40,000-square-foot area which would be equivalent to a lot and in that 40,000 square feet area at that time, the agreement says that they could disturb no more than 50 percent of that, and the remainder of the property, in this case I think the 15 acres would be preserved through open space conservation easements which the landowner would -- could keep either in, uh and he, the landowner had the option to keep the rest in private ownership, basically to keep people off, but agree not disturb it.

Those were basically the intent of the agreements. And to that end you notice that we have the exhibit that shows the 40,000-square-foot lot area, we have the language about no more than 50% disturbed, and we have the language requiring them, at that, at each time, to uh give us the conservation easements for the remainder of the property. Now it was never the intent, as I understand it, that the 40,000-square-foot area be exactly where Attachment B was because at that time no one knew, uh it was understood that the property owners would have to adjust lot lines among themselves to make the roads works and the accesses work and so you'll see some language in the agreement that the areas could be shifted somewhat. Now as I understand of the five, uh, three of the five have been built. You notice from, I think, uh from the previous screen we had up there it shows where they were in comparison to the original Attachment B lot lines. Shane? The blue lines you see there are what is shown on the exhibit of the uh, 40,000-square-foot building area shown on the Attachment B. And you can see, I don't think the Van Leeuwen home was built at this time, was it Shane?

Shane Sorensen

(unintelligible)

David Church

Let's see. That was. What was shown on the Attachment B is the pad. You can see that has been adjusted up and the lot lines have been adjusted. The Kester home which was the first one built is basically within that 40,000-square-foot area. And down there I think that is the uh Bushman home is basically in that. We still have the other lot that hasn't been built on and of course what's at issue here is, the uh, what was then the Strang

property which was a long, narrow piece and I understand that some boundary adjustments have taken place among the land owners to make the full 15 acres on that.

But that was the intent of the agreements back then, uh, was that there would be a maximum disturbed area of half of 40, uh, the equivalent of a lot, disturb 20,000 square feet, privacy for the other 20,000, control over the rest of the lot, keep the people off, but guarantee that it would be kept as open space. Now whether we accomplished that or not I suppose that from my discussion with the Lynton's attorney, may eventually be decided by some judge.

Now sometime later, for whatever reason, this body increased that 40,000 to 60,000 and acknowledged that in fact with a 40,000-square-foot and the equivalent lot, you're really going to disturb eventually the whole 40,000. We haven't limited people, necessarily, to 20,000 disturbance, have we Ted?

Ted Stillman

(unintelligible)

David Church

And your last site plan you approved was a 60,000 disturbance for the Van Leeuwen property.

Now if you like I can tell you where the 40,000 came from. It was at the time the City required the things in the critical environmental zone be done only as a PRD, and the maximum lot size in the planned residential developments was 40,000 square-feet. Some time after, that maximum lot size was increased to 60,000 square-feet in the PRD zones. And now there is no upper limit in the PRD zone as that policy has been changed since then.

But that's what I believe the documents fairly attempt to do. I think that's what Mr. Howard in his memorandum that I saw uh points out he was a party to the original agreements. He may agree or disagree with my memory and intention but that's a fair summary, I think, of where we are.

Troy Stout

Can I ask a quick question?

Jannicke Brewer

Go ahead.

Troy Stout

I'm sorry. Go ahead Brad.

Brad Reneer

That change in the PRD. Does that affect this?

David Church

Well, uh that may be an argument. It wasn't intended to affect this. The intention of this annexation was to, uh, to accomplish, uh, to allow these people to have homes but to in effect to keep the massive, private, enclosed estates off the hillside there.

Jannicke Brewer

That 4, uh, 60,000, it was never changed by an addendum to the Annexation Agreement so the agreement actually says 40,000 still, but the City, because of the change in PRD, allowed the area to go up to 60.

Brad Reneer

And that was explicitly an exception to the annexation?

Jannicke Brewer

It's not in the agreement. It's not been amended. No.

Troy Stout

So why would we be held to the same standard on this property? Or would we be? Would we be held to the 60,000 on this approval based on a previous unrelated item? Doesn't seem like it would be.

Jannicke Brewer

(unintelligible)

Troy Stout

I'm sorry did you hear my question, David?

David Church

Yes. Well, Mr. Bushman has reminded me. On his we did allow him to disturb up to 30,000 square feet, treating it like a 60,000 square-foot lot, and he gave us the easement on the remainder above the 30,000 square feet.

Troy Stout

Does that necessarily obligate us to go above the 40,000 for future applications?

David Church

No. No, let me just say when the issue comes up, and I'm sure the attorneys here will let me know where I'm wrong on this on both sides. When we go to enforce this if we do get an enforcement, there will be questions that will, that a judge will have to determine. The first is of course, is the agreement enforceable? And one of the issues that comes up is have you waived the enforcement by, uh, your right to enforce it by previous decisions. And that will be a fact issue of whether we did or didn't by ignoring the provisions of it. Now, uh, obviously two parties to an agreement can agree to change it, but there are more than two parties to this agreement. There are several parties to this and not all are in the room. So I've never thought the City could just willy nilly, without the consent of everybody else who signed this agreement, change the agreement. And so an argument will be made that it's not enforceable by the City because we have somehow waived our ability to enforce it because of these uh either lack of enforcement or mistakes we've made in the past.

Troy Stout It would seem to me, just thinking through this logically, that if we did show that failure at any point, that we would be held the maximum of that failure in the future.

David Church

That might be some argument that would be made in some decision by a judge, but I can't just say that's where it's going to end up, but that is a logical thing to do. Uh, the agreement says that: "the owners further agree on lots larger than 30,000 square feet above the High Bench ditch, no more than 50 percent of the natural landscape will be disturbed and no more than 50 percent of the lot area will be fenced." I thought knew what that meant, and everybody did when it was written. I don't know what it means now. But as you look in hindsight in a way you try to apply it. But there are lots of things like this in this agreement and as Jannicke will tell you, the trouble is it started out as a nice agreement and then started to get amended by council members, by landowners, by planning commissioners, by the public, and now when you look back, what everyone thought was a nice tidy thing, it looks like a mishmash 12 years later. But it is what it is.

Jannicke Brewer

Thank you.

Shane Sorensen

There is, there is a statement on the previous page from the one you just read from, David, and this is what I've always thought the Planning Commission and City Council used to justify the changes that have been made, you know, without an addendum to the agreement. Uh that's that second paragraph talks about changes uh, adjustment of lot lines, street locations and similar details. You know on preliminary final plat approvals.

Jannicke Brewer

Where exactly are you reading?

Shane Sorensen

Page 2, first full paragraph on page 2.

Jannicke Brewer

But is says substantially conform to the design, though. Minor adjustments of lot lines. I just don't feel that 60,000 to 15 acres is a minor adjustment. That's all. Anyway. Okay. Any other questions of David right now?

David Church

Uh, let me just say where, and I don't know if there's gonna be other proposals made by Lyntons or not. As a procedural matter, what we need to do is we need to make a decision and move this forward so that they can have their due process rights to take it to whatever level it is instead of us just going back and forth and back and forth. And that's for both sides. The landowners who are around them have a right to have whatever

decision it is reviewed quickly and the Lyntons have a right to a decision to have it either accepted or have it reviewed. So I really think that …

Jannicke Brewer

So we need to make a recommendation tonight. And you always remind me that a recommendation can be positive or negative. So a recommendation can go either way but we need to move it to City Council.

David Church

We need to get eventually to these people where everybody knows where they are instead of just bouncing them back and forth.

Jannicke Brewer

Okay. Thank you. Mr. Schmutz did you have

Evan Schmutz

Yes. I would like to speak to these things. I appreciated hearing Mr. Church's discussion and appreciated also the opportunity that he extended a week or two or three ago for us to meet and try and make sure we understood the history of what has transpired. And that was very helpful to us.

Uh, it is the Lynton's position that the Annexation Agreement does not provide a limitation except the percentage limitation of the lot. If you look at the Annexation Agreement, paragraph 5 subparagraph B which we've been looking at on page 3 of the Annexation Agreement. It says .. uh. This is, this is the provision that applies here. There isn't any other provision that has been adopted by agreement that modifies this. It provides that the owners further agree that on lots larger than 30,000 square feet above the High Bench Ditch no more than 50% of the natural landscape will be disturbed and no more than 50% of the lot area will be fenced. This is a lot that is clearly larger than 30,000 square feet and therefore the only thing that is - the only provision that is applicable in this Annexation Agreement is that we cannot disturb more than 50 percent of the natural landscape that exists on the lot. There, with respect to the definition of a lot, that becomes very important because it is the word lot that is used here. Nothing in this agreement defines the lot. The City itself has moved from size to size in its ordinances, and then has abolished any lot size by its most recent amendment, but with respect to the practices of the City, the City hasn't followed any agreement, any practice. Even when this was in place with respect to earlier ordinances, it didn't follow this agreement, it, it treated uh area of disturbance at 40,000 at, it should have been 20,000 feet on the original amount, but it's treated at 40,000 feet then moved it up to 60,000 feet without any relationship or changes in the ordinance and without any relationship to the definition of what lots are permissible, the City simply by tradition or by practice, but not by any uh legal agreement or any ordinance, decided to move that up and apply an increasing number of square feet. It has also permitted the square footage of 60,000 to be exceeded. I think that it's the Kester lot that that was done on. The Van Leeuwen lot was approved at just under 60,000 feet but it's even exceeded the 60,000 foot traditional practice.

But our emphasis is to simply say that the Lyntons have attempted to comply with every request that has been made, and I think have successfully complied with every request, and we're simply saying that City's position with respect to the 60,000 foot limitation is not found in any legal document, recorded or otherwise, nor in any ordinance. The only, only, uh provision that is applicable is the 50 percent of the lot. Now the City has requested and we have complied with the combining of the two parcels that the Lyntons have had into a single lot so they have a lot that is 15 acres in size. There is no definition that would contradict that to redefine what a lot means for purposes of this Annexation Agreement. Therefore they're entitled under this agreement to disturb up to 50 percent of 15 acres, now that's not their intention to do that. Their intention is to disturb 90,000 and then to reseed and restore the natural vegetation. And they need that much to complete the plan that they have devised. And I uh, we're not here for, we're here, I'm here only to explain what their intentions are and to also explain my interpretation of the documents that govern the actions of the City, and it's our feeling that there is no legal basis on which you can restrict it. But we would like to have the recommendation made, a determination actually made and I don't have any intention of uh of suggesting a threat, I really don't. That's not the discussion, but we do believe that uh this needs to be tested with uh a legal determination if, the uh, if the application is - is not approved. And so we're asking that you consider the documentation that you're bound by, and read for your own selves paragraph B and you'll see that uh there is not a limitation other than 50 percent of the lot with respect to disturbance of the natural landscape.

David Church

Jannicke, may I, may I just make one comment. Just uh. Let me tell that, where, if you look on page 2 Location of Building Lots and Density, Paragraph 3 D And this is where, uh "The maximum number of residential lots within the Willow Canyon project shall not exceed 5, to be distributed within the area as shown on Attachment B to the annexation declaration." Which you have there in front of you. And then if you look at, on page 4, it'll indicate that when you deal with open space that all of the area shown on the Kester, Strang, Redpoint and Bushman property on Attachment B would be preserved with a conservation easement. And that's where we get that 40,000. And the stuff outside the 40,000 was the other open space shown on the Attachment B. Now I acknowledge uh, as Mr. Schmutz says, that that, uh obviously a late comer to this agreement, his client who buys it, could read this and they're going to say, we've read this. We didn't understand that. We think it's ambiguous and can't be enforced against us. But I just wanted to explain where the uh where the 40,000 comes from as opposed to the others. And without the attachment B, the document makes no sense at all. And as you see the Attachment B shows open space and you have to know where the various Kester, Strang, Red Pointe and Bushman property was and which is which. But that's where we came, that's was, uh, my understanding of the intent.

Jannicke Brewer

That's how I always understand it, too. That is because of Attachment B gives us the 40,000 and the open space around it and the paragraph that David just read. Mr. Dunn did you have want to make a comment?

Jim Dunn

When it's my turn. I don't want to ..

Jannicke Brewer

You go ahead right now. Before then we'll

Jim Dunn

Thank you. (unintelligible) represent the Willow Canyon homeowners association and of course they're concerned about the outcome of this proceeding and however it may turn out either at the City Council level or district court level. And the concern that we have more than anything else is that there were a handful of home owners all of which participated in this annexation agreement. The property that the current applicant owns was owned by Robert and Connie Strang. They signed off on the annexation agreement and understood what it meant. Then the property changed hands and went into the hands of Pen and Ink. And Pen and Ink entered into an agreement with Joel Kester who's one of the home owners in this area, who was part of the development project here. That the-- not just the annexation agreement, but the restrictive covenants binding upon this parcel of land, so to represent that there are no other documents between the parties that bind the outcome of this proceeding is not correct. And we're not suggesting to this body that you have the obligation or power to enforce our restrictive covenants. But in fact there are restrictive covenants that were filed after the annexation agreement and there is an agreement between Pen and Ink and uh Joel Kester that says, that runs with the land, and it says that it runs with the land and is biding upon Pen and Ink and any successors and interests, that the restrictive covenants of the subdivision will be obeyed and those restrictive covenants are essentially the same restrictions that you see in the annexation agreement in terms of percentage of ground and lot size, etc.

And so to suggest that there aren't any other agreements or that there's no public record or there's not a paper trail other than the annexation agreement is not correct. It's my belief that Mr. Howard who's the president of that homeowners association has already presented those documents to the Planning Commission. Uh, so you should have a copy not only of the restrictive covenants which also bear a recorder's stamp but also a quit claim and boundary line adjustment agreement between Pen and Ink, the predecessor and interest of the applicant, and Joel Kester. So to say we have them wrapped up every which way but loose – I don't know, again everyone is entitled to their due process, they're entitled to the system. But the system would also dictate that there has to be some reasonableness to what goes on here because if we start down this slippery slope then everybody in there comes down and starts to make application to change what has happened on their lot, or if not them, the next homeowner who decides the house needs to be bigger or there has to be a barn or there has to be a shed or garage something else. And I think once we start down that path you've created a disaster, and that's our biggest concern. The homeowners that are there are content with what they have. They would rather it not be disturbed, but if it is disturbed, then you're going to see that kind of application from future owners, and maybe the ones that are there, to change what everyone has been understood to be the agreement between the parties.

I'm happy to answer any questions if you have any.

Jannicke Brewer

K. Thank you. Now I'd like to hear, oh Shane, go ahead.

Shane Sorensen

Quick thing, uh, Mike Howard came in the other day and, I think it was four weeks ago, when that, uh, those restrictive covenants were discussed at this meeting. There's some confusion about a map that was there. You may at some point want to address that. The map really didn't, wasn't recorded and didn't relate.

Jannicke Brewer

Uh, April scanned it and emailed it to all of us so we have the agreement with it showing that it was exhibit, I think it was A that shows the outline that shows that the whole lot is part of that agreement with Joel Kester. But thank you, Shane, for bringing that up.

It seems like there other items that eventually might need to be addressed on hazards, and we got the driveway and so on, but that's not our main question. Pointed out, our main question tonight, is the area of, the limit of disturbance. And to move forward, I want the Planning Commission to discuss that, but it seems like that is probably our main purpose tonight, make a recommendation to City Council what we feel that the limit of disturbance would be, get their input. Then whatever the outcome, and we can move forward on the driveway, hazardous areas, all these other things, those are secondary. So, Planning Commission, what are your feelings?

Steve Cosper

I have a question.

Jannicke Brewer

Yes please.

Steve Cosper

Maybe I'm simplistic approach to this but. I'm getting confused with total amount of land they own, building lot size and disturb because I'm reading this map that you've attached here and it says Kester disturbed area 66, 000 square feet.

Jannicke Brewer

Shane uh, Shane explained that a little

Shane Sorensen

Well

Steve Cosper

I'm getting confused by how much land each owner has, how much the building lot is and how much the disturbed site is because that's what we're talking about here. But I don't know how it relates to the other.

Shane Sorensen
Well on the Kester one.

Steve Cosper
Do we have a chart here?

Tracy Wallace
Was the Kester one done with permission or without permission?

(Unintelligible mumbling from several people)

April Riley
I sent emails to everybody. I forwarded emails that Joel had sent after the last meeting. He apologized for the confusion that he'd done some work but there were areas that had remained undisturbed that are included, that's just that rough outline just goes around, but there's areas within there that he says have not been disturbed and should not be included.

Steve Cosper
So this disturbed, Kester disturbed area . .

April Riley
So it's actually less than what

Steve Cosper
So is that the lot's size or is that the disturbed area?

April Riley
No.

Shane Sorensen
That line was just drawn on the there just as an example and, and and you know, what I was going to do is just verbally explain to Planning Commission, which I did 4 weeks ago, that that's just the outline. There are areas within it that were not disturbed.

Steve Cosper
But if Kester says he's agreed to a 50 percent disturbance does that mean his lot size is a 132,000?

Shane Sorensen
No.

Jannicke Brewer
No it's the same as Van Leeuwen. It's not. Actually Kester when he started he, he only disturbed 20,000 to begin with, but he changed that.

Steve Cosper
(unintelligible) this thing right here where you've got these numbers.

David Church
Yeah, Kester, Kester would dispute that he's disturbed more than we allowed him to.

Shane Sorensen
And he has to me over the phone (laugh) and in writing.

Jannicke Brewer
And the emails there was sent to everyone.

Steve Cosper
But the 66,000 square feet of disturbance . . .

Jannicke Brewer
Shane did.

David Church
Shane calculated that from an aerial.

Shane Sorensen
66,000 is just this dark blue line.

Steve Cosper
Okay. So it's not all disturbed.

Shane Sorensen
Right.

Steve Cosper
Even though it says here "Disturbed."

Shane Sorensen
I didn't take the time to go through and get it out.

Devin Fowles
Do we know if any of that ever was disturbed and just revegetated or was it ever not touched like . .

Jannicke Brewer
(unintelligible) I've been up there a lot and no it was not.

Evan Schmutz
So is the policy that you can leave little pockets within the area of disturbance so as to not count them on the full area of disturbance?

Jannicke Brewer
It looks like that has been done.

Evan Schmutz
I'm asking if that is the policy or if it's just recognizing now that's what Mr. Kester did and so it is approved by uh, you know, retrospect

Tracy Wallace
There's no approval and no policy regarding that. That is just what's been done and is being brought before us right.

Unidentified
But the fact that it has been done

David Church
We need to treat everybody as fairly and equally as we can obviously.

Troy Stout
OK. That said then if this was done without clearance, you know, A is there a penalty for that, and B because it was done without the consent of the City, does that necessarily obligate us to allow it in the future? In my opinion it does not.

David Church
Yep.

Jannicke Brewer
Mike.

Troy Stout
So it can't be used as a precedent.

Mike Howard
(unintelligible) I'd just like to address that for just a second if I can. Major areas within what's been outlined

Jannicke Brewer
Get a pointer there if you want to

Mike Howard
And from the Willow Canyon . . I'm sorry what was that?

Jannicke Brewer
Get a pointer.

Tracy Wallace
Point right there

Jannicke Brewer
Show us the areas you're talking about

Mike Howard
Areas in this portion across the front and middle here up along here and down in various portions here are areas that have never been touched, never had been disturbed never had anything done to them. Kay? And (sniff) His disturbance area right now is just under 30,000 feet of disturbed. Now from a Willow Canyon architectural committee and homeowner standpoint, we have allowed this on other property. We want them to keep as much as natural as we can but we allow them to move their landscaping in and around natural vegetation, count what they disturb. But, yes this has been a practice and we been since we started

Steve Cosper
So the Llewellyn would have uh 30,000 square feet of the actual disturbed as well? Is that

Mike Howard
Pardon me?

Steve Cosper
The Llewellyn property would have

Jannicke Brewer
Van Leeuwen

Mike Howard
Van Leeuwen

Steve Cosper
Van Leeuwen. Sorry.

Mike Howard
Unfortunately there was a period (momentary interruption by Steve Cosper) when I started with this and did all the architectural control where I'm at now there was a period of about 3 years in the middle where Van Leeuwens came in and I have no idea. I wasn't a part of that at all.

Steve Cosper

And how much has been disturbed there?

Mike Howard
I haven't been up there.

Jannicke Brewer
That's pretty well been disturbed what's outlined there.

David Church
60,000 square feet has been disturbed on Van Leeuwen.

Mike Howard
There's much more disturbed on Van Leeuwen.

Shane Sorensen
Well they've followed what was approved through the Planning Commission.

(unintelligible)

David Church
For whatever reason, the Planning Commission and City Council approved the Van Leeuwen site plan with 60,000 square feet of disturbance. Isn't that correct Ted? And that's, and they went right to the maximum.

Jannicke Brewer
Anybody else has a comment?

David Church
But let me just answer Steve's question on the Kester owns a much larger parcel and we have a conservation easement over the rest as does, the other land, uh Van Leeuwen and the other landowners. Their entire lot is much larger

Jannicke Brewer
Kester too owns -- his about 15 acres he has a conservation easement and he also has a trail easement for the City to allow to go through and also has an easement for the water tank for the City.

Steve Cosper
So if you were to go by precedent, and I don't know if that's applicable here, you'd say 60,000 has been allowed

Mike Howard
Once.

Steve Cosper
Once, but

Jason Thelin

And if it was allowed is there anything as give and take to the City meaning if they gave these easements and water towers, would it make sense for us to give a little more disturbance?

David Church

No we did not give that in exchange for anything.

Jason Thelin

And in this case the development is asking for over 90,000 disturbed area

Unidentified

92

David Church

And to be real frank, in case you didn't understand the proposal, their proposal is: we will disturb 92 square feet and give you the remainder in a conservation easement. Or we will challenge the agreement and then we'll do what, if we win, we'll disturb as much as we want. And so they're offering you 92 plus the conservation easement or a fight that you, the City may lose and open the box for them to uh fence the whole thing and build a big 15-acre estate up there.

Tory Stout

It's my opinion, though, that we fight our battles and defend what we intended to do. If that's necessary. I don't want to speak out-of-turn too much but at this point, you know, if this body is here to recommend what we feel is right, I don't think we should stand in fear of challenge.

Jannicke Brewer

I feel the same way. Because of Van Leeuwen, I can see that we'll go the 60, but I think that disturbance, anytime you put the shovel in the ground, it's a disturbance. There are maybe some water lines and so on, we tried to revegetate, but once you start digging and grading or doing something like that, its never back to the way it was.

Evan Schmutz

Could I say.

Jannicke Brewer

Go ahead.

Unidentified

I think it's important for you to respond.

Evan Schmutz

I don't agree completely with what Mr Church has said. We haven't come in and said either this or we go out and make life as miserable as possible. We've addressed 92,000 feet which is the plan that the Lyntons want to follow and that the design site plan and architect have worked with them and believe that is required to build the home they would like to build. Um. We don't want to come in and threaten and say you either do it our way or you don't. What we want to point out is there isn't a single one of these lots except Mr. Bushman's where the City has followed its ordinance or its annexation agreement. There is, you cannot find any document of agreement, recordation or ordinance that allows the 60,000 feet that you're doing. It's simply not there. What the City has done is moved by tradition and unwritten policy to allow different kinds of disturbances, but the City has ignored the agreement that is in place. The agreement provides for 50 percent of the lot. The ordinance says there is no limit to the size of the lot.

So what we would ask you to do is recognize that the 92,000 feet fits within the annexation agreement and within the ordinance and ask you to respond. But I really don't, did not intend in any way to present this as a threat or an argument, Mr. Stout. That's not our intention. Our intention is to indicate what the Lyntons applied for and ask you to make a decision. The Lyntons believe that the decision to reject that would be uh, to make be a decision that is not based on any legal right or documentation. And so it certainly does raise the issue and we expect the issue would have to be tested. But uh, we just want to express our point and what the application is they desire to have. (unintelligible background noise) raise threats that we're not making.

Jannicke Brewer

I appreciate that. And it is true. After all these years, is it 12 years? Whatever years this is since we did this. It is always hard when you go back and then uh sure what is said or. I was part of it. I knew the intent. But I can see that our business right now is to try to come to a consensus and make a recommendation and you know where to go and where to move from here. So that's all. Any more questions on this or anybody would like to make a motion or you like to make more comments or questions?

Brad Reneer

I'd like to make a comment. As I understand it, I can see where David Church – as I read this if I look at 3 D, uh it makes sense to me that this is – he's interpreting it the same way I would interpret it. And I'm sorry if Pen and Ink and the Lyntons weren't aware of this when they invested in the property. Umm I think maybe past Planning Commission and City Council may have been made an error in stretching, at the top of page 2 where it says "the City approve minor adjustment of lot lines, street locations, and similar details," I think they were stretching the definition of minor a little bit, but I don't think we have to make that same mistake. I think if we, by what we have here, what we've been asked to follow as a Planning Commission, I think that if we go up to the same thing that the Lynton's have, I think that would be reasonable from our point of view.

Jannicke Brewer
You mean the Van Leeuwens?

Brad Reneer
Yes. Van Leeuwen.

Troy Stout
I would add to that too. You know, it's unfortunate that it is not vividly clear what the limitations are. And I also think it's unfortunate that those, that the language has been interpreted to allow the things to be expanded beyond their original, what was originally intended. The other side of that though is the people in this community value their hillsides greatly. They use the trails systems, they enjoy the views and the vistas and they've entrusted this body and the City Council to help protect their long-term interests. So I think in this case, if there is ambiguity it's our responsibility as the City to defend what the intent was of this agreement and if it is ambiguous in any way then it is up to a fair-minded judge to decide if it comes to that, but if it were me in that position to make a judgment, I would say that at, in the very worst case scenario, as far as the City is concerned, that the maximum allowed would have to match that what was previously allowed, but not triple that amount.

Brad Reneer
I would think that looking at this um

Troy Stout
Area of disturbance. You're asking 90,000 square feet (unintelligible 60,000) I'm sorry. I meant a 50 percent increase. Sorry.

Brad Reneer
And uh, looking at the plan here, I've, I don't know. Would the Lyntons consider perhaps shortening the driveway, having it come up to here, you know, move the house down a little bit

Devin Fowler
We actually tried like the whole driveway thing the slope and everything I mean it'd be a 19 percent slope, that won't even pass by you guys, you know. So, I mean uh, the driveway that's as long as it is simply because it has to because of slope.

Brad Reneer
And all these retaining walls have to be disturbed? I mean that

Devin Fowler
This mud flow that's already flowing through that lot. We don't want it to happen again, you know so that

Brad Reneer

I understand that, but, but I thought those were just like. How long, how high -- were those retaining walls? It seems you said they were only like 3 feet or something.

Devin Fowler

No. they're probably 8 to 10 feet each. About 2 levels –just 2 levels

Brad Reneer

With 2 each? Okay I just wondered if there was some way that you could redo this to reduce the area of disturbance while maintaining the essential aspects of the plan.

Steve Cosper

I have a question on this. The HOA here has stated that the home is not located within the building pad specified. Can you flash that up there Shane? Do we know what that building pad looks like?

Jannicke Brewer

No. No because

Steve Cosper

The HOA stated that the home is not located within the building pad specified for the lot.

Shane Sorensen

Oh, there that's the blue line (interruptions by several unidentified speakers)

Steve Cosper

The light blue line? (more unidentified interruption)

Unidentified

Those original blue lines were never followed.

Jannicke Brewer

And they were not intended to follow 'cause they didn't know where to put 'em up there. They were indicated 3 or 5 pads of 40,000 to show as a preliminary

Steve Cosper

On July 28, 2008, is that being made a point in the HOA document?

Jannicke Brewer

That's HIO that's the homeowner

Brad Reneer

That's what the minor lot line adjustments was for is that this could be shifted in a minor way and that's why I'm saying I think that was more than minor

Steve Cosper

If that was never being followed, why is that even brought up here in the HOA document?

Jannicke Brewer

That was just brought up there to show that 40,000 square foot pads would be allowed in this area for the 5 lots

Steve Cosper

(unintelligible)

Jannicke Brewer

I know. I've read it. Yeah.

(Unidentified and unintelligible background conversation)

Jannicke Brewer

Gary.

Gary Bushman

Gary Bushman. I'm the homeowner right west of the (interrupted by Jannicke Brewer telling him to use the pointer) property. Uh, I'm not so concerned about if the Commission decides that they want to remedy past errors by (unintelligible) uh same space. 60,000 here that uh, they've done. But what my concern is that on that uh open space agreement as I understood it and I built and I relied upon is that there wouldn't be a home behind my house. As I've talked to Lyntons, I've expressed the same to them. Uh, I really don't have a concern of how much space the City allows them. But it's pretty clear on the map that this is designated open space behind my home. That was what was agreed to when I signed that agreement. This road right here, that's across my property which I donated to allow them to have access to their lot. Have all these people to have access to that lot. There's no compensation for that, but I relied upon the agreement that I would have no one behind me. That's one of the reasons we located back here. So if that is a decision the board would like to make to give them 60,000, I'd like a provision that preserves the open space as designated on the plat – map, and that I can retain my open space behind me.

In addition I also would like to point out that the City has worked with me and the previous property owner on designating the trail here. And that this was agreed as a-- as a location of the trail, and to move that trail otherwise with their agreement here, there's a concern that if this is raised 10 to 15 feet in the air, uh, to fill for that road, that depending on how they did it, if they had to do a 2 to 1 grade on that, that would take it right to the property line and cover the trail, all this area. I would support if they wanted to move the trail behind and connect it down here or something. But to move it closer, this as pointed out last time, this is all open space right here and that would put the trail basically in my front yard. This is the front of my house right here, faces this way.

So once again, I'm not concerned about. See the Van Leeuwens they don't, they didn't really impact anybody by what you, by that error that was made, the 60,000. But it impacts the people here and it impacts this development over across the street, the other 10 acres cause they're going to come and want the same. So now that impacts all these people, my house, and the Andersons which are over here. So you'll have all this group coming for what you approved that group. Uh, so those are my, my main concerns. I recognize an error was made with Van Leeuwens, but it didn't seem to impact anybody.

Jannicke Brewer

Thank you. 'kay lets get back to – okay Mike? Otherwise, I want to see if we can get a recommendation on the area.

Mike Howard

Uh, one last comment. Uh, the, uh. Where the homes sits right here, one of the problems is of course area of disturbance, and part of this is because this is the hillside. A lot of the area of disturbance dealing with the hillside could be minimized if the house is moved slightly.

'other issue is the height. We haven't even addressed that yet because we're looking at just disturbance at this point, but the height as the plan shows it, the parking area right here at 15 feet over natural grade, it'll be higher than the oaks where they park their car. Step up to the house, there's about 5 steps going into the main floor. That's going to put the area in here uh at, at the top of the house about 45 feet over the grade. So if we slid this into the hollow a little further, pulled it away from this hill, it would help with Gary's concern dealing with the house in back of him, but it would also minimize the area of disturbance and would perhaps present a fight that's coming up next dealing with height.

Jannicke Brewer

Yes. Height is another problem just as a geo technical study because we have concerns about the debris flow, the springs possibly, like that, and we would like to see that, but tonight I think we'll just stay with the area of disturbance, see if we can get a decision, because that's the first thing. Without that we can't move anyway, forward or backward. Or anyway so we do need to make a recommendation on that. Then after that then we start working on other issues.

Troy Stout

I'm ready to make a motion

Jannicke Brewer

Yes please.

Steve McArthur

Before, before you do, is David Church coming back in do we know?

Jannicke Brewer

No.

Steve McArthur

Not coming back. Okay, because one of my questions would be, we, we've got a slight precedence that -- that's allowed 60,000, but everything in our document is 40,000. So do we, do we support irregularity by recommending something at 60 or are we better off just going back and trying to enforce what we've got, and then if somebody were to come in and says well, we want to match 60, then we're on a different playing field.

Troy Stout

I agree with what you're saying. I think I agree with what you're saying.

Steve McArthur

Okay, make a motion then

Troy Stout

Okay, my motion would be that we deny the uh application to expand the area of disturbance to beyond 90,000 square feet

Jannicke Brewer

Beyond 90?

Troy Stout

I'm sorry. Their recommendation, their request is to disturb 90. Correct?

Jannicke Brewer

Uh huh.

Troy Stout

That's what I'm saying, That we deny. (sigh) Sorry, where are the exact numbers? 90,036 square feet? My motion is that we deny the request

Jannicke Brewer

We recommend to City Council

Troy Stout

We recommend to City Council that they deny the request to expand the area of disturbance from the designated 40,000 square feet to 90,000 square feet, I'm sorry, 90,036 square feet, and that they consider previous encroachments on that original limitation as exceptions that may not necessarily apply to this site.

Jannicke Brewer

Say that last sentence again so I get it. Please.

Troy Stout
That they consider previous encroachments on the original designation as exceptions which may not be applicable to this request.

Steve McArthur
I'll second the motion.

Jannicke Brewer
Okay. We got a motion by Troy and a second by Steve McArthur. Go ahead please and make any.

Brad Reneer
Question. Are we also, are we going to give the City Council any recommendation on how much area of disturbance we would allow?

Troy Stout
I think they would send that back to us.

Tracy Wallace
That's correct. We would send that back to you.

Jannicke Brewer
His motion said expand from 40,000 and any other thing would be an exception.

Steve McArthur
I would recommend a couple of things on the motion.

Troy Stout
Go ahead

Steve McArthur
Because our annexation agreement talks about disturbing 20,000 – 50% of 40,000 foot pad.

Troy Stout
I'm sorry. That's what I meant to say.

Steve McArthur
I would fix that number. And then I would, I would leave out anything about considering the expansion of the other lots because I think they were done on a whim as much by the homeowners without permission, other than the one, and I don't see how it really applies.

Troy Stout
Okay, and I'm in agreement with you in spirit. I -I -I was trying to be careful to point out, to acknowledge that changes have been made in the past and I agree through

your language that it wasn't necessarily by approval of the City, but we acknowledge that those things happened and that those things should be isolated from this decision, that we should adhere to the original language or the intent of the language of the original agreement. Is that what you're saying, Steve?

Steve McArthur
Yeah.

Troy Stout
So if we need to word it differently, I- I'm willing to do that.

Steve McArthur
Well and I think I'd probably be in favor of, that last section, just leave it out.

Troy Stout
Just stricken?

Steve McArthur
Just leave it out. I think what we want to do is try to get back to the intent of the agreement, and recommend that we follow a 40,000 foot building pad, a 20,000 foot area of disturbance and deny a 90,000 + area of disturbance.

Troy Stout
I wish David were here. Um. Can we get that read back as it's written right now?

Charmayne Warnock
The uh, possibly. "Troy Stout moved to recommend to deny the application from the Lyntons to expand the area of disturbance, uh, of 92,000 was it 90,000?

Troy Stout
90,036 square feet.

Charmayne Warnock
36, beyond the designated 20,000 square feet." And then did you want to strike your last part or do you want me to read that too? I'll just read it.

Troy Stout
Go ahead and read it.

Charmayne Warnock
"And that they consider previous encroachments on the limitations as exceptions that may not necessarily apply to this site." And that's what Steve wanted to strike, so.

Steve McArthur
It sounds like those exceptions were, were given, granted by the City.

Charmayne Warnock
Yeah, well exceptions are

(unintelligible)

Troy Stout
Okay. And so let's strike that last part and basically say, and say that the original agreement limiting the lot size to 40,000 square feet and disturbable area to 20,000 square feet be observed.

Jannicke Brewer
Better read it again Charmayne

Charmayne Warnock
Okay. Say that again Troy. The original agreement what?

Troy Stout
The original agreement limiting the lot size to 40,000 square feet and the disturbable area to 20,000 square feet be adhered to.

Brad Reneer
And see, I agreed with the first part of your motion I'm just warning you, you're going to have some opposition from me because of the second part I think we should be a little bit, give a little bit more leeway . . . Under the minor adjustments clause I'd like to maybe make some

Troy Stout
Would you like to amend? I think we need to stick to the language that's

Brad Reneer
Yeah, but uh, I, uh, I don't want to recommend to them that we follow this 100%. But that we allow, I'd like to see them come back with another plan that doesn't disturb the 90,000, but be willing to consider whatever they come back and not hold it to that strict, um. Do you know what I'm saying?

Jannicke Brewer
40,000. Don't want to hold them to the strictly to 40,000?

Brad Reneer
40,000. Yes. That's how I feel about it.

Troy Stout
I think if they're, they may send it back to us to review what should be accepted. I uh Tracy

Tracy Wallace

Uh, um, I think you're looking possibly at two different things too, you may want to just separate it, um with your two, and separate the recommendation and one, look for direction or uh, give direction to the City Council on the way that you were looking at it in the second one. Does that make sense? Because I hear (unintelligible interruptions) two different things that I hear and I'm trying to absorb both of them at the same time it sounds like.

Steve McArthur

Except the thing is, is Planning Commission we're supposed to try to interpret the documents and apply it to ordinance.

Tracy Wallace

That's correct.

Steve McArthur

So as it's written the document by my understanding, says 40,000 foot buildable pad, 20,000 disturbance. Anything outside of that is, is a City Council judgment call that I don't think is our position.

(unintelligible – several people speaking at once)

Steve McArthur

Minor adjustment we're talkin' moo - moving the size, and minor – to me minor would be less than 10 percent. You know, but not, not a 50% boost in total area and. I don't think that's minor. So anything other than 20/ 40, I think the City Council should tell us. We see what you're doing, we see what's gone on. You know, we've analyzed the risk and, you know, we can see bumping it to whatever. We're not. But I think coming out of here, I think it's a 20/40 and a denial.

(unintelligible – several people speaking at once)

Troy Stout

We could deny it on that basis. That, that's our solid ground. That's precedent. So any exceptions have been exceptions whether they were requested or not.

Steve Cosper

And that really follows the original intent and that is what we're supposed to be doing here, not granting exceptions.

Brad Reneeer

City Council can do that. That's not our role

Steve McArthur

And it – and it may not be right, and I may not even agree with it. But I think with the documents we've got and the ordinance that was in effect, that's probably what oughta happen.

Brad Reneer

So okay, so regardless of whether I think there should be an exception, I need to stick with what I see here.

Jannicke Brewer

So regardless, yeah, regardless of that, the resident set 60,000 on the two lots.

Unidentified

But where's that?

Jannicke Brewer

But that's not in the document, you know it's just been the exception

Steve Cosper

Just been an exception the City Council has approved.

Steve McArthur

And we're held to ordinance and the documents

Troy Stout

I don't think we're saying here that an exception can't be made in this case. But this proposal is rejectable, in my opinion. And, and not on this basis alone. I mean there's plenty more to go over.

Jannicke Brewer

I feel like because both the Bushman and the Van Leeuwens have been accepted at 60 that I would like to recommend to City Council that, that the document says 40 but that we will accept the 60.

Troy Stout

But Jannicke, I guess I'm - I'm still a little confused.

Jannicke Brewer

Yes, but I don't know where. . Because it's true, its, we can't find it written, uh.

Troy Stout

Is there any point where we've accept 60. I mean, we know that it exists, but did it clear any approval process?

Jannicke Brewer
That's what I don't know, but Mr. Bushman's agreement says 60,000. He disturbed 30,000. So at that time the City was, but I uh, we can't find, Ted, we can't find the point where the City Council decided or changed it to 60, can we?.

Ted Stillman
Yes. Both Planning Commission and Council voted on Van Leewuen at 60

Jannicke Brewer
And Bushman too, at 60

Ted Stillman
Right. Right.

Jannicke Brewer
And that's what I would like to see, 60.

Troy Stout
Okay. So just a clarification point. Is, because they voted for 60 as an exception, does that go back and require us to approve 60 from this point forward?

Steve Cosper
They voted on 60 with a disturbed of 30, but the Van Leeuwens went ahead and disturbed 60?

Ted Stillman
No. Van Leeuwen was approved at 60,000 disturbed. That came from both Planning Commission and City Council.

Steve Cosper
That doesn't make any sense.

Troy Stout
But, but we've also approved height restriction, uh, exceeding of height restrictions in the past. That doesn't mean that every height restriction going forward is automatically approved.

Jannicke Brewer
No. It comes in case by case.

Troy Stout
So I would say we treat this again as a case by case, on case by case.

Jannicke Brewer
Any more discussion on this?

Charmayne Warnock
Can I read this again, make sure?

Jannicke Brewer
Please. Read it again. I was just going to ask you to do that.

Charmayne Warnock
Okay. "Troy Stout moved to recommend to the City Council that they deny the Lynton's application to expand their area of disturbance beyond the designated 20,000 square feet to 90,036 square feet." Period or do you want something else?

Unidentified
Period.

Unidentified
Period.

Troy Stout
And?

Charmayne Warnock
What?

Troy Stout
Well we had added that the original. . .

Charmayne Warnock
"And that the original agreement limiting lot size to 40,000 square feet and the area of disturbance to 20,000 square feet be adhered to." Do you want that in there or not?

Steve McArthur
I would.

Troy Stout
I think, it's just, it's a little bit redundant but it clarifies what our intent is.

Charmayne Warnock
Okay so you do want that in?

Troy Stout
Yes.

Charmayne Warnock
Okay

Jannicke Brewer

Okay, we got, still got a motion by Troy and a second by Steve McArthur. Any more discussion on the motion? (silence) Okay. All in favor?

(Ayes)

Jannicke Brewer

Any opposed?

(Nays)

Jannicke Brewer

So we have Troy voting yes. Steve Cosper voting yes. Jason no. Jannicke no, Brad no and Steve McArthur yes. So that's one, two three. Three to three. (laughter and background talk) This is your big chance Tracy.

Brad Reneer

You're sitting there all comfortable, aren't you?

Steve McArthur

Which won't matter cause you'll get it next week, anyway.

Tracy Wallace

Which doesn't matter I'll get it anyway.

Steve McArthur

And we're only a recommending body. We don't approve anything.

Tracy Wallace

I'm going to, uh, vote yes on this only because I agree with the original intent of what your motion is saying, um that, yes we should deny this based on what is before, what is previously happened, what is in our ordinance, what is in the annexation agreement, uh, but in doing so I also want to consider the uh, 60,000 because, uh and again looking at the notes from the Planning Commission and City Council meetings before will give us better understanding of why the 60,000, why the Planning Commission and City Council approved the 60,000 at that particular time of disturbance. So I want to look at that further. But I agree with denying it at this time.

(various unintelligible responses)

Jannicke Brewer

So you're voting yes to the motion.

Tracy Wallace

Yes to the motion

Charmayne Warnock

Yes to the motion. So it passed.

Jannicke Brewer

So we got four. And the reason I voted against it, is that I think that we should go to the 60 -- 60 disturbance.

Tracy Wallace

And I said yes simply because until I see that

Jannicke Brewer

Because I'm against the 90,000 but I wanted 60.

Brad Reneer

And I think we should, maybe this is a moot point. Maybe they won't consider anything but this plan, but I think we, that if they come back with something um that we should be willing to consider it even if it's more than that.

Jannicke Brewer

They can't come back. Okay. We got this far. And we'll and you, Tracy, we'll see you at City Council next week. We thank you for coming, all of you.

MOTION: Troy Stout moved to recommend to the City Council that they deny the Lynton's application to expand the area of disturbance on their parcel in Willow Canyon beyond the designated 20,000 square feet to 90,036 square feet, and that the original Annexation Agreement limiting lot size to 40,000 square feet and the area of disturbance to 20,000 square feet be adhered to. Steve McArthur seconded. Ayes: 3 Nays: 3 Troy Stout, Steve Cosper and Steve McArthur voted aye. Jannicke Brewer, Brad Reneer and Jason Thelin voted nay. Tracy Wallace voted aye to break the tie. Motion passed.

Minutes of the Alpine City City Council
September 23, 2008
At issue: Lynton Site Plan Application

September 23, 2008

Minutes of the City Council Meeting held on Tuesday, September 23, 2008 at Alpine City Hall, 20 North Main, Alpine, Utah 84004 at 7:00 pm:

The following members were present and constituted a quorum:

Mayor Hunt Willoughby
City Council Members: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch
Staff: Shane Sorensen, Janis H. Williams, April Riley and David Church
Others: Jannicke Brewer, Aaron Holtsclaw, *Lone Peak Press*, Kip Botkin, *Police Chief,* Paul Thompson, Jeff Snyder, John Magnusson, Josh Hall, Dylan Henry, Amy M. Thackeray, Dorie Joseph, Jennifer Xanthos, David Castleton, Kathy Castleton, Joni Wootton, John Wootton, Doug Cunningham, Ula B. Hemingway, Bob Hemingway, Alane Kester, Eileen Lamoreaux, Nick Bradshaw, Josie Everett, Diane Curd, Scott Kenney, Matt Gowdy, Gary Bushman, Chris Zebley, Dawn Stark, Taleda Osman, Mike Larsen, Connie Larsen, Stephanie Stevens and Carolyn Rossi

I. CALL TO ORDER. Mayor Hunt Willoughby called the meeting to order at 7:00 pm and excused Kent Hastings who was out of the country and Ted Stillman who was in Virginia

Mayor Willoughby told of the unexpected passing of Chuck Mattfeldt who had been a City employee since 1984. We will send our sympathy and condolences to his widow, Linda, and their children. Mayor Willoughby also said Chuck Mattfeldt will be sorely missed for all of the little projects and jobs he did without being asked and without expectations. There will be a memorial service at the Alpine City Cemetery on Friday, September 25, 2008 at 11:00 am. Everyone is invited.

II. PRAYER/OPENING COMMENTS – Shane Sorensen

III. PLEDGE OF ALLEGIANCE. Matt Gowdy led the audience in the Pledge of Allegiance.

IV. PUBLIC COMMENT. Time has been set- aside for the public to express their ideas, concerns and comments on items not on the agenda.

Mayor Willoughby brought the audience up-to-date on the status of the library. Jim Tracy, Bradley Reneer and several others met with one of the neighboring communities and got some good information on starting and maintaining a library. Mayor Willoughby said we are still planning on having a budget workshop meeting in November and the library project will then be looked at and prioritized. Mayor Willoughby said that we will be able to see where we are at that time. We know that we are at 1/10th of a slow year in building permits and all the projects will be taken into consideration at that time. Mayor Willoughby said that in the upcoming Newsline he will be asking for those interested in serving on a library committee or a library board to please contact him.

Kathy Castleton thanked the Mayor and City Council for their hard work. Mrs. Castleton asked Shane Sorensen about piping the ditch behind the homes in the Ranch Subdivision. Shane Sorensen said this project is on a priority list and one of the problems is the size of the pipe; however, they have received some proposals and are now in the process of looking at this. Once the size of the pipe is addressed then there is the funding and this will be a rather expensive project.

Matt Gowdy presented his Eagle Scout project and said he saw Richard Vernon, the Caretaker of Moyle Park. Richard Vernon had two projects and Matt Gowdy said he accepted them. The first one was to install twelve wooden steps to the creek bed on the east side of the park and these steps will make it more convenient for people coming from Sunburst Lane and then to assemble three park benches. Jim Tracy thought this was a worthy project.

Ula Hemingway paid a great tribute to Chuck Mattfeldt and his hard working ethics and extended her sympathies on his passing.

V. CONSENT CALENDAR

A. Business Licenses –
Fred Atkinson – JORDAN LAKE ASSOCIATES, LLC; 378 River Meadow Drive
Daniel S. Elder – DOUBLE TIME PRESSURE WASHING; 798 South 840 East

B. Payment Request – TNT General Contractors; Ft. Canyon Sewer - $161,795.45

MOTION: Tracy Wallace moved to approve the Consent Calendar for the business licenses for Jordan Lake Associates and Double Time Pressure Washing and the payment request for TNT General Contractors. Jim Tracy seconded. Ayes: Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed. Kimberly Bryant was absent for this motion.

VI. ACTION ITEMS

A. HOBBY BREEDER'S LICENSE. April Riley said that Gwynth Zebley lives at 185 N. Pfeifferhorn Drive and owns three Great Danes Under Alpine ordinance, a property owner can only have two dogs; however, the animal control ordinance does have a provision for a Hobby Breeder's License where an owner may have up to five (5) registered, purebred dogs provided all provisions are met. The AKC registration and rabies certificates from the Animal Control Officer for each dog had been provided. At the last City Council Meeting action on this item was tabled until such time the Zebley's could come and answer some questions concerning dogs and property. Scott Eatchel, the Lone Peak Public Safety District Animal Control Officer, reported on the three Great Danes and said the Zebley's dogs have current rabies vaccinations, are AKC registered and stay in kennels that are kept very clean. Jim Tracy had a concern that the gates in the front of the yard were only 5' in height and where the exercise yard is. Scott Eatchel said the Zebley's have said they will not put the dogs in the area where the horses are, but will put them in the grassy area. Tracy Wallace asked Scott Eatchel if he has been out to that area on any other complaints. David Church said that Alpine has a lot of animal violations.

MOTION: Thomas Whitchurch moved to grant the Hobby Breeder's License to Chris and Gwynth Zebley at 185 N. Pfeifferhorn based on the review by staff. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

B. LYNTON SITE PLAN. April Riley said that David and Jeanette Lynton submitted a site plan to build a residence at approximately 136 N. Preston Drive. The property consists of three (3) parcels totaling approximately 15.06 acres in the CR-40,000 zone. This lot was part of the Willow Canyon annexation, but not part of the subdivision and therefore had to go to through the Planning Commission and City Council for approval. The three lots would be combined into one parcel. Ms Riley said the biggest issue was when this plan originally came in requesting a limit of disturbance of 90,000 sq. ft. with either 20,000 or 30,000 sq. ft they wanted to restore and revegitate. April Riley said this is the fourth site plan to come in out of the five in the Willow Canyon area. In the Annexation Agreement there was some language about the lots above the High Bench Ditch of a certain size, that only a certain amount could be disturbed. On the Annexation Plat which was more like a Concept it showed there would be 5 lots up there of 40,000 sq. ft. and only one half of that could be disturbed. April Riley said there has been a difference of opinion on what could be disturbed. Jannicke Brewer told the history of the site plans and the area of disturbance on each site plan.

The Planning Commission reviewed the site plan and made the following recommendation:

> " Troy Stout moved to recommend to the City Council that they deny the Lynton application to expand the area of disturbance on their parcel in Willow Canyon beyond the designated 20,000 square feet to 90,036 square feet, and that the original Annexation Agreement limiting lot size to 40,000 square feet and the area of disturbance to 20,000 square feet be adhered to. Steve McArthur seconded. Ayes: 3 Nays. 3 Troy Stout, Steve Cosper and Steve McArthur voted aye. Jannicke Brewer, Brad Reneer and Jason Thelin voted nay. Tracy Wallace voted aye to break the tie Motion passed."

Tracy Wallace said he agreed with original intent of the motion, adding that when the issue came to

the Council he wanted to look at the records for the Van Leeuwen and Bushman site plan approvals to understand why they were granted larger areas of disturbance. Jannicke Brewer said that since both the Van Leeuwens and Bushman's areas of disturbance were expanded, she felt they could accept an area of disturbance of 60,000 square feet for the Lynton's. Jannicke Brewer also went over the history of the property and the Annexation Agreement.

David Church said the intent of the Annexation Agreement and the Development Agreement was to prevent large fenced estate lots and the City Council met with those property owners and came up with a complicated compromise. It appeared to David church that staff, the Planning Commission and City Council made a mistake in allowing Mr. Van Leeuwen the 60,000 sq. ft. of disturbance. David Church said that David Lynton is the third buyer down the line of this property and wants to build a large home. David Church felt this homeowner is set on the current design of his home. David Church counseled the City Council to reach a decision on this issue.

Mayor Hunt Willoughby said we would be hard pressed to not allow the 60,000 sq. ft. and said he likes consistency. The Planning Commission felt the proposed retaining walls were a disturbance on the property and Shane Sorensen said a simple geo-tech study has been done on this property.

David Church suggested that on Tracy Wallace's motion it could be to deny the site plan with 90,000 sq. ft. and instruct the Planning Commission that the City Council will accept the site plan with no more than 60,000 sq. ft. or whatever disturbance so that we get a firm guidance so the Lynton's can come up with a new plan or take it to the next step.

MOTION: Tracy Wallace moved that the City Council deny the Lynton application of 90,000 square feet of disturbance and instruct the Planning Commission that the City Council will accept up to 60,000 square feet of disturbance. Jim Tracy seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

David Church said there is a third party involved and that is the Homeowners Association and Mr. Kester have certain contracts with the Lynton's that are different than what we have and this may or may not satisfy them as they have some restrictive covenants that might be more limited than what the City has; however, this is the Homeowners Association's issue and not the City's issue.

C. **ARTS COUNCIL LETTER OF SUPPORT.** Mayor Hunt Willoughby said the Arts Council would like the City to sign a letter supporting the Arts Center to be constructed on Main Street. Draft #2 was included in the City Council Member's packets as well as a letter prepared by Mayor Willoughby. Paul Thompson made a presentation and said he felt good about the Mayor's draft letter and accepted his changes. Mr. Thompson said things are moving along nicely and they have a buyer and a citizen was interested in purchasing additional acreage which will help solve some of the parking problems. Mayor Willoughby asked that Paul Thompson supply a list of the foundations and addresses where this letter will be sent and the letter will be printed on letterhead.

Paul Thompson brought up the issue of the library and said they are not interested in moving walls, but are interested in getting a room so they can start the process toward certification. The library was not on the agenda and could not be acted upon.

MOTION: Thomas Whitchurch moved to approve the Mayor's draft letter supporting the Arts Council. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch Nays: 0 Motion passed.

D. **LUMINARIES.** Joni Wootton told the Council they will be getting a sheet showing how the luminaries ended up last year and then discussed the 2008 Luminaries project. Joni Wootton said they sold 480 kits last year and this amount was up from the previous year; however, Mother Nature made a surprise visit last Christmas Eve and it snowed very hard and when the snow plows came buy the candles were blown out. Mrs. Wootton said they were able to give the Chamber Choir $3,000 out of last year's sales. Joni Wootton said she was planning on cutting back on the number of students used and she suggested that the luminaries start at the roundabout and continue up Main Street to 200 North and still go around the block

where City Hall is. Mrs. Wootton said she was hoping to renew the same contract as last year with the route change. Following are the proposed changes to the 2007 contract:

A. The contractor will provide Luminaries on, but not limited to, the following areas of City property:
   1. Both sides of Alpine Main Street, starting at the roundabout located at the junction of Main Street and Canyon Crest Drive and ending at 200 North
   2. The interior area of the roundabout located at the junction of Main Street and Canyon Crest Drive
   3. The sidewalk surrounding the city block where City Hall and the Lone Peak Public Safety District building are located.

MOTION: Jim Tracy moved to approve the Luminary contract with the changes stated. Tracy Wallace seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

E. WILL JONES SITE PLAN. April Riley said that Will Jones submitted a site plan for the property located at 53 N. Main Street. The Planning Commission made a recommendation to the City Council that the site plan be accepted as a commercial site plan, but instructed the applicant to submit a parking site plan for the purpose of determining the parking requirements. The City Council has approved the site plan for commercial use.

April Riley said the applicant proposed to use only the main level of the home for commercial use which includes approximately 1008 square feet. Also included was the floor plan showing the basement and upstairs dimensions and noted that the ceiling height does not comply with commercial requirements. The applicant requested that the Planning Commission only consider the main floor of the home for parking requirements which means four parking spaces would be required. The Planning commission reviewed the parking plan and made the following motion:

> "Steve McArthur moved to approve the parking plan for 53 N. Main with 4 parking stalls, noting that the attic and basement do not meet building code requirements and cannot be used as office space. Troy Stout seconded. Ayes: 6 Nays: 0. Motion passed unanimously."

MOTION: Kimberly Bryant moved that the City Council approve the parking plan with four parking stalls for the site plan at 53 N. Main Street based on the Planning Commission's recommendation. Thomas Whitchurch seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

F. DAVID'S COURT, PLAT D MINOR SUBDIVISION. April Riley said the proposed David's Court, Plat D Minor Subdivision is located at approximately 500 E. Healey Blvd. The proposed subdivision consists of three lots on 5.108 acres in the CR-40,000 zone and all the lots range in size from 40,000 square feet to 3.24 acres with all of the lots meet the frontage and area requirements of the zone. A different layout was previously approved for the property that included a cul-de-sac and more lots.

The Planning Commission reviewed the plan on September 16, 2008 and made the following recommendation:

> "Steve McArthur moved to grant concept and preliminary approval to David's Court, Plat D minor subdivision, and recommend the City Council grant final approval subject to the following conditions:
>
> 1. The City's water policy be met.
> 2. A bond be provided for the required improvements.
> 3. The fire chief approve the location of the fire hydrants.
> 4. There be a five-foot combination sidewalk along Healey Boulevard.
>
> Brad Reneer seconded Ayes: 5 Nays: 1. Steve McArthur, Jannicke Brewer, Brad Reneer, Jason Thelin, Troy Stout voted aye. Steve Cosper voted nay, saying he did not like the layout. Motion passed.

Tracy Wallace had some questions pertaining to a derelict parcel that was adjacent to Alpine Canyon Crest Estates and Jim Tracy said he wanted to see this taken care of now so this problem wasn't forced on someone else. Shane Sorensen explained the history of this parcel and technically this parcel is not a derelict parcel as it is attached to an adjacent lot. David Church said this was a flag and didn't see this as a significant issue other than it created an odd-shaped lot.

MOTION: Tracy Wallace moved that the City Council grant final approval for the proposed David's Court, Plat D Minor Subdivision subject to the following conditions:

1. The City's water policy be met
2. A bond be provided for the required improvements
3. The fire chief approve the location of the fire hydrants
4. There be a five-foot combination sidewalk along Healey Boulevard

Jim Tracy seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

G. **TRANSPORTATION (STREET) MASTER PLAN MAP.** April Riley said that when New Castle, Plat D was recommended to City Council, the Planning Commission discussed the need for a connection from Quail Hollow to Alpine Blvd. As part of that discussion, the Planning Commission asked that the Transportation (Street) Master Plan Map be brought for review for the possible addition of a proposed local street connecting Quail Hollow and Alpine Blvd. The Planning Commission has reviewed the map and made some proposed changes. A copy of the revised map with the proposed changes was included in the Council Member's packets. The Planning Commission held a public hearing on September 16, 2008 and made the following recommendation:

"Steve McArthur moved to recommend approval of the updated Transportation (Street) Master Plan Map with the following changes:

4. 100 South be designated a collector road
5. Show a connection between Watkins Lane and Country Manor Lane
6. The connection between Canyon Crest to Westfield Road be designated as a collector road
7. Add a connection from Alpine Blvd to Quail Hollow
8. Show a second connection from Blackhawk Lane to 600 East
9. Update the map to reflect the roads that have been completed including Westfield Road, 200 North, 400 West and Heritage Hills Drive
10. Realign Whitby Woodlands Drive to match the existing portions of the same road.

Steve Cosper seconded. Ayes: 6 Nays: 0. Motion passed unanimously.

MOTION: Thomas Whitchurch moved that the City Council set a public hearing for October 14, 2008 on the Transportation (Street) Master Plan map. Kimberly Bryant seconded. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays: 0. Motion passed.

VII. REPORTS

VIII. COMMUNICATION

Mayor Hunt Willoughby – On Thursday evening there will be an Open House from 5:00 to 7:00 pm at IM Flash pertaining to rebuilding SR-92.

Jim Tracy –

1. The e-packets have not been on line for the last couple of meetings
2. On landscaping our open space, Councilman Tracy suggested we have staff survey all open space and then prioritize the property rather than satisfying the squeaky wheel. Thomas Whitchurch felt this would be a great PRO Committee project. If open space was put on a map we could include all sidewalks the City plows.

3. Received a letter from a concerned citizen said they have noticed cars parks in front of the bank and in the no-parking zone in front of the park. Jim Tracy sat there today and didn't see this as a problem as the cars weren't there very long.

4. Said the last request Chuck Mattfeldt made was if the City employees could get gas cards. We will remind Ted Stillman about this when he returns.

Shane Sorensen – On the corner of Heritage Hills Drive and Ft. Canyon there is a parcel of land that is in question. When the alignment for Heritage Hills Drive was done, North Pointe deeded this parcel to the City so we the road could be built and there was a small left-over piece of land which showed on the North Point plat as Open Space. Shane Sorensen's solution was to reduce lot 23 by approximately 4,158 sq. ft. as it is a rather large lot. If there is a shortage of Open Space then take a piece of the lot and attach it to the Detention Pond. Mr. Sorensen said Tom Patterson is anxious to clean this up and wants this property to be deeded to him. David Church suggested that we take care of this now so as not to create a problem in the future as North Point was granted years to record.

IX. EXECUTIVE SESSION to discuss Litigation, Property Acquisition and Personnel. An Executive Session was not needed.

X. APPROVAL OF MINUTES

City Council Meeting of September 9, 2008

MOTION: Kimberly Bryant moved to approve the minutes of the City Council Meeting of September 9, 2008 and adjourn. Ayes: Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch. Nays. 0. Motion passed.

The meeting adjourned at 8:20 pm.

Transcript of a portion of the tape of the Alpine City Council
September 23, 2008
At issue: Lynton Site Plan Application

Verbatim transcription taken from the September 23, 2008 City Council Meeting pertaining to the Lynton Site Plan. 21:30 minutes on the recorded CD of the meeting and transcribed by Janis H. Williams, City Recorder.

B. **LYNTON SITE PLAN.** Mayor Hunt Willoughby asked April Riley to comment on the Lynton Site Plan

April Riley - This is a site plan that is located up on Preston Drive This site plan is on one of the five parcels that were part of the annexation, but were not part of the subdivision, therefore as a site plan they have to come through Planning Commission and City Council Um This went to Planning Commission last week if you have the recommended action from them The biggest issue was the site plan came in requesting a limit of disturbance of 90,000 sq ft approximately of which, I think, around 28,000 or 30,000 sq ft they wanted to "restore," revegitate type of thing It would take it, in their application, what they thought would be a 60,000 sq ft limit of disturbance Um There is quite a history on this and I don't know how much detail you want me to go into on the discussion from Planning Commission Uh Previous site plans, this is the fourth one of the five up there In the Annexation Agreement, um there was some language about the lots, I don't have it in front of me, I think it was above High Bench Ditch of a certain size, uh that only a certain amount could be disturbed Uh On the Annexation Plat which is more like a concept it showed there would be five lots (showing on the map) up in this area of 40,000 sq ft and only half of that would be disturbed so there has been some say difference of opinion on how that is to be interpreted The past site plans that have come in um the last one that came in, I believe, (turning to and asking Jannicke Brewer) was that the Van Leeuwen?) was the Van Leeuwen site plan which was approved with a 60,000 sq ft limit of disturbance The Planning Commission recommended to deny the application based essentially that the I guess that their recommendation was to deny the 90,000 sq ft which essentially is to deny the site plan application as it has been presented and that's come to you tonight

Hunt Willoughby - is the 60,000 the largest previous?

April Riley – Right The Bushman's is 30,000, is that correct? (turning and asking Jannicke Brewer) Jannicke will remember the history better

Jannicke Brewer – Bushman had a 60,000 sq ft pad and he disturbed 50% which was 30,000 sq ft Joel Kester started with a 40,000, disturbed 50%, and started by disturbing 20,000 but then he has made some changes and added on to that I just wanted to say something We've made one recommendation to the best of our knowledge But in your packet tonight there is some more information that was not available to Planning Commission last week about the approvals on the Bushman's and the Van Leeuwen's how the Van Leeuwen's was figured

Jim Tracy – It is the third to the last page in our packet – the second to the last page I'm sorry

Hunt Willoughby – The motions are they

Jim Tracy – Number 3 on the top of that page and the motion from Thomas is that correct, Jannicke? I don't want to speak for you, Jannicke?

Jannicke Brewer – On the page from City Council right there and, uh we sent this on because there was a difference of opinion on interpretation of the Annexation Agreement and what we had done So we were advised by David to make a recommendation to City Council you made a recommendation on the disturbance and then the applicants can then decide how they want to move forward Either accept the City's recommendation or proceed to the next step which could be to Court

Jim Tracy – The way I read this on this previous one is a they had 59,700 which was 14% of the total lot.

Jannicke Brewer – And that was straight but on that one that was considered on his whole10 acres The 59,000 sq ft what it says here in the minutes is 14% of his acres, not 50% of his pad That's why it's very confusing

Jim Tracy – I'm just trying to let them know what you're

Tracy Wallace – And that goes to beg the question of the limitation of the 40,000 sq ft Where did that come from originally? Or the 60,000 sq ft which gave you the disturbance of 30,000 sq ft?

Jannicke Brewer – The 40,000 was on the plat, the Preliminary Plat that was part of the Annexation Agreement It doesn't say in the text but when you look at the plat there were 5 lots up here and each was marked 40,000 Then a couple of years later in our PRD Ordinance the City went from a maximum lot size of 40,000 to a maximum lot size of 60,000 That was the time that Mr Bushman came in His pad was then considered 60,000 and he disturbed 50% equals 30,000 sq ft I don't know exactly how things were considered for the Bush er Van Leeuwen property

David Church – Mayor, may I? And Jannicke correct me if I misspeak The intent of the Annexation Agreement and the Development Agreement was to prevent large mansion estate lots, so to compromise when we did those 5 lots, we came up with a fairly complicated process the City Council did with the property owner At that time the maximum lot size we allowed in the planned residential was 40,000 sq ft The land owners agreed that they would lim that no matter how many acres they owned of these 5, they would be limited to one house The Agreement what Jannicke refers to as the Preliminary Plat isn't actually a Preliminary Plat but is a conceptual map plan They agreed that the remainder of their property beyond the 40,000 would be private open space They could keep it with a Conservation Easement but they wouldn't be giving it to the City because they didn't want to, frankly We would not allow them to fence it in like it was a private preserve and so we have references in the agreements where each lot at that time were 40,000 they could disturb half of their 40,000 and fence in their 40,000 was the intent When we changed our PRD Ordinance to the minimum er maximum lot size to 60,000 sq ft. then for whatever reason staff and this Council, the Planning Commission just gave them the benefit over that even though the Development Agreement didn't refer to either 40,000 or 60,000 and we recognized the 60,000 sq ft. for Mr Bushman so he was able to disturb half of 60,000and everything over the 60,000 he gave us a Conservation Easement for Mr Kester gave us a Conservation Easement for everything over his 40 000 even though we may not have enforced that as diligently as we could have at least some people have said we haven't It appears to me on Van Leeuwen that for whatever reason, the Planning Commission, staff and City Council made a mistake in the calculation and had that 60,000 in mind and instead of allowing him to disturb only 30,000 allowed him to disturb 60,000 and then we, of course, have the Conservation Easement over the remainder beyond that But actually I think that is an enforcement, an application mistake I don't think that you ever intended to change your mind and allow people to disturb 60,000, but we did Wouldn't you think that is fair? That is water under the bridge, obviously, we're not going back to Van Leeuwen saying we made a mistake, you tore up more The question here is, of course this is over the years when we first did this Agreement back in 1998, I know this will shock some people in this room Back in 1998 people in this town thought that a 40,000 sq ft lot and a 20,000 sq ft home was a mansion Now with the change in attitudes and economies and the value of the land, people think that's way too small for this piece of property and that's why we're here It's complicated by the fact that this is technically the third buyer down the line and so what we are doing is enforcing against a subsequent buyer the intent of the original people and the question will be for some judge sometime if we don't reach an agreement or accommodation on this – as whether or not these things are clear enough to be enforced against the people down the line That's why I recommend that since this is such a big issue that we reach a decision and get this moved on to where it will eventually be, obviously a decision by the court because I think the applicants are set on their current plans and current designs, are they not, April and Jannicke? They think that the cost of the lot and what their desires will meet will require a disturbance of significantly more than even 60,000

Hunt Willoughby – Is that clear?

Jim Tracy – How many other lots are there in the City that this could come up on?

David Church – None For the five, there is one more not built on up there

Jannicke Brewer – There is one across the street from Bushman and that is the last one

Jim Tracy – Are there any repercussions if we approve this?

David Church – Well yes We have all the neighbors like Mr Bushman and Mr Kester and others who

Jim Tracy – Repercussions if we deny it?

David Church – Well if we, if you say we're not going to approve more than whatever it is, then the applicant can move it one and we can see if these agreements are effective or not effective or the applicant may choose to build within what we think the restrictions are That will be there choice We've spent. what 9 months on this, April?

April Riley – I don't think it's been that long

David Church – It seems like six months ago when I first

April Riley - Originally, but there were some issues and it kind of died out and we didn't hear from them for a long time and they came back with a plan again

David Church – It seems like the first time I heard about this

Jannicke Brewer – They worked with staff for a long time but Planning Commission they have been to two meetings since August.

David Church – Anyway, I am sure that from the applicant s point of view they have worked with us for a long time now and we need to make a decision

Hunt Willoughby – It seems to me that if I go back to my comment earlier about consistency, I like consistency, we've kind of been wavering and it seems to me that we will be hard pressed to not allow the 60,000 because whether right or wrong we did that on

Thomas Whitchurch – based on the total square footage So they wanted to disturb 90,000 but they want to replace 30,000 of it back to its natural state? How does that work?

April Riley – That's the issue that we felt that any putting a shovel in the ground was essentially disturbing it Part of what they want to revegitate is those retaining walls, but in our opinion it was quite a significant amount of work that I wouldn't say it was restoring how do you say you are putting a wall and restoring it to its natural state? You're not But I think their intent was build a wall put some natural vegetation back because it will be tiered, put some vegetation in between and give it a little more natural look. I don't want to put words in the Planning Commission's mouth, but I think they felt that any work was a disturbance, that maybe where you are putting some utility lines in around the front maybe that would be a little easier to restore Maybe you wouldn't notice it was there, but it would be hard not to notice a retaining wall

Jannicke Brewer – Especially when you build several retaining walls, 8', 10' tall We felt that was disturbance

Kimberly Bryant – It's hard to put back.

Jim Tracy – Is a retaining wall needed for the home or for the yard?

April Riley – You know I'm not as familiar, maybe Shane could

Shane Sorensen – Unintelligible (not close enough to the microphone)

Jannicke Brewer – And the retaining walls on the back of the house that is where the debris flow came some years ago and it is also to provide a certain safety against anything free flow, you can build it up and make the flow go behind it It will be kind of serving several purposes

Jim Tracy – Jannicke, has any geological studies been done on this property yet?

Jannicke Brewer – No, this is our first issue on this property But if we know we are going forward, the Planning Commission feels we need is a geotechnical study because there is that debris flow, the spring there are several issues that need to be handled, but this needs to be decided first

Shane Sorensen – Mostly Unintelligible There have been a couple of tests up there earthquake

Kimberly Bryant – Laughing Is that what happens in an earthquake - shaking? I hope we didn't pay for that

Hunt Willoughby – My freshman geology students could probably write that same

Jannicke Brewer – We like geotechnical studies because just the safety for family living up there We don't want to go ahead without making this

Hunt Willoughby – Council, are there any further questions for staff?

Tracy Wallace – Uh Just to reiterate part of the Planning Commission's dilemma over this was going over back and forth between what was black and white and deciding what was in our Ordinance and what was given before us then going forward and saying "OK we will accept 60,000 feet of disturbance Uh it actually came down to a split vote between the Planning Commission um as to which way they wanted to go and in either case I think the Planning Commission would look at 60,000 if they were to come back and request that uh as we go forward from here

Kimberly Bryant – I'm not comfortable with 90,000

Tracy Wallace – The 90,000 we felt was extreme, but we felt because of the circumstances the area of disturbance that was granted before and some other considerations the 60,000 was probably acceptable

Hunt Willoughby – Is somebody ready to make a motion to that?

Tracy Wallace – Well, I guess one of the questions would be within the motion would be how are we going to

construct the motion I think we have a little more leeway than the Planning Commission That we would accept the Application up to $60,000 um 60,000 feet or just deny it on its face just because they are requesting 90,000 If they are requesting 90,000 at this time until they bring in something different I would actually prefer denying it and ask them to come back with something else

Jim Tracy – If we limit it to 60,000 sq ft they wouldn't be able to build this house from what I understand so they would either have to come up with new plans, a new house, or sell it to someone else

Thomas Whitchurch – As I am looking at it

Jim Tracy - That is why I asked Shane is the retaining wall was for the house or for the yard and he said it was for both Even if you limited the yard size I don't think you could get it below 60,000

Shane Sorensen - Unintelligible (not close enough to the microphone)

Thomas Whitchurch – And I think that obviously that is a decision they have to make

Jim Tracy – Or maybe they can push the house closer to the street

David Church – Mayor, may I make a suggestion to Tracy's motion if he is struggling to make one I would recommend that if you make a motion that if what you are saying is to deny the site plan with 90,000 sq ft and instruct the Planning Commission that the Council will accept the site plan with no more than 60,000 sq ft or whatever disturbance so that we get a firm guidance so the Lynton's can take that and come up with a new plan or take it to the next step

MOTION: Tracy Wallace moved that the City Council deny the Lynton application of 90,000 square feet of disturbance and instruct the Planning Commission that the City Council will accept up to 60,000 square feet of disturbance Jim Tracy seconded

Thomas Whitchurch - Do we want to say something that based on prior approval or not

Tracy Wallace – um well yes, I guess we could add "based on our Ordinance and the Annexation Agreement "

Jim Tracy – But we gave more than that allowed

Tracy Wallace - But we would be giving more than that allowed previously for the Van Leeuwen property I think I would just leave it at that

Hunt Willoughby – Any more questions on the motion?

Ayes Kimberly Bryant, Jim Tracy, Tracy Wallace and Thomas Whitchurch Nays 0 Motion passed

David Church – Let me mention to the Council that there is a third party that is involved and that is the Homeowners Association and Mr Kester have certain contracts and that with the Lynton's that are different than what we have and this may or may not satisfy them and they certainly may pursue whatever rights they have They have some restrictive covenants and some agreements that they think may be more limited than what the City has, if I understand it right from the Homeowner's Association and Mr Kester But that's their issue particularly with the Restrictive Covenants and not our issue but I just didn't want people to think by this motion the City thinks we are affecting their Restrictive covenants

Tracy Wallace – Again, the only reason we take their Covenants, the CC&R's is actually so we can review them so we make sure they don't violate our Ordinances Not for enforcement or any other reason

Hunt Willoughby – Very good and we thank the Planning Commission for their work

This item on the agenda ended at 42 20 on the Recorded CD of the Meeting

Janis H Williams
Alpine City Recorder

ADDENDUM C

Relevant Alpine City Ordinances

ALPINE CITY
DEVELOPMENT CODE

Originally Adopted as Ordinance 99-01 by City Council June 8, 1999
Last Amended by the City Council: August 26, 2008

***Printed from the Alpine City website on December 1, 2008.

Only the code sections that are relevant to this Motion for Summary Judgment are included in this Appendix. For the entire Alpine City Development Code, please visit:

http://www.alpinecity.org/developmentCode.htm

ARTICLE 2. 3 APPEAL AUTHORITY (Ord. 98-02:1/13/98, Amended Ord. 2006-17, 11/14/06)

2.3.1 APPEAL AUTHORITY

2.3.1.1 There is hereby created an Appeal Authority, which shall be known as the Alpine City Board of Adjustment, which shall act in a quasi-judicial manner to hear appeals regarding the interpretation or application of Alpine City land use ordinances

2.3.2 BOARD OF ADJUSTMENT

2.3.2.1 **Establishment and Organization of Board of Adjustment.** The Board of Adjustment shall consist of five members to be appointed by the Mayor with the advice and consent of the City Council, and two alternate members who shall sit as members of the Board at the call of the Chair of the Board of Adjustment in the temporary absence of a regular member At least three members of this Board must be present to form a quorum The Board of Adjustment shall organize and elect a Chair and adopt rules for its activities in accordance with this Code The Rules shall include at a minimum that the Board

1 shall notify each of its members of any meeting or hearing,
2 provide each of its members with the same information and access to City resources as any other member
3 convene only if a quorum of its members is present and
4 act only upon the vote of a majority of its convened members

Meetings of the Board shall be held at the call of the Chair and at such times as the Board may determine All meetings of the Board shall be open to the public The concurring vote of three members of the Board of Adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency, or to decide in favor of the appellant

2.3.2.2 **Term of Office.** Each member and alternate member shall serve for a term of five years provided that the term of members of the first Board shall be such that the term of one member shall expire each year The term of office of each member shall commence the first day of February Any vacancy occurring on said Board shall be filled in the same manner as an original appointment for the unexpired term The Mayor with the advice and consent of the City Council, may remove any member of the Board of Adjustment for cause if written charges against the member are filed with the Mayor and after a public hearing if such hearing is requested by the member

2.3.2.3 **Duties and Powers.** The Board of Adjustment as the Appeal Authority shall

1 hear and decide variances from the terms of the land use ordinances and
2 hear and decide appeals from land use decisions applying or interpreting the land use ordinances

2.3.3 VARIANCES

1 Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns leases, or in which he holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the ordinance

2 An appeal for a variance shall be filed with the Zoning Administrator

3. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, and give at least ten (10) days public notice thereof, as well as due notice to the parties in interest and adjacent property owners within 300 feet, and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person by agent, or by attorney.

4. The Chair, or in his or her absence the acting Chair, may administer oaths and compel the attendance of witnesses.

5. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records or its examinations and other official actions; all of which shall be immediately filed in the office of the Board and shall be public record.

6. Decisions of the Board of Adjustment regarding variances become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules or at the time the decision is made.

7. The Board of Adjustment may grant a variance only if:

   (1) Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances:

   (2) There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

   (3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

   (4) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

   (5) The spirit of the land use ordinance is observed and substantial justice done.

8. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2.3.3 #7, the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship.

   (1) Is located on or associated with the property for which the variance is sought; and

   (2) Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

9. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2.3.3 #7, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

10. In determining whether or not there are special circumstances attached to the property under Subsection 2.3.3 #7, the Board of Adjustment may find that special circumstances exist only if the special circumstances:

    (1) Relate to the hardship complained of: and

    (2) Deprive the property of privileges granted to other properties granted in the same zone.

11. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

12. Variances run with the land.

13. The Board of Adjustment may not grant a use variance.

14. In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:

    (1) Mitigate any harmful effects of the variance; or

    (2) Serve the purpose of the standard or requirement that is waived or modified.

2.3.4 APPEALS FROM LAND USE DECISIONS

2.3.4.1 Standards for Review of Appeals. The Board of Adjustment shall hear and decide appeals from land use decisions applying or interpreting the land use ordinances, and shall comply with the following standards:

1. The applicant, a board or officer of the City, or any person adversely affected by the Land Use Authority's decision administering or interpreting a land use ordinance may appeal that decision to the Board of Adjustment by alleging that there is error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the land use ordinance.

2. The appeal must be filed within ten (10) days from the date of such decision by filing with the Zoning Administrator and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3. An appeal filed in accordance with this section stays all proceedings in the appeal action, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustment or by the district court on application and notice and on due cause shown.

4. The Board of Adjustment shall fix a reasonable time for the hearing of any appeal within thirty (30) days of the date of filing such appeal with the Zoning Administrator.

5. Proceedings and hearings before the Board of Adjustment shall be public and held pursuant to rules adopted by the City and in conformance with the Utah Open and Public Meetings Act and with the general principles of due process. The person or entity filing the appeal may appear at such hearing in person, by agent, or by an attorney of his/her choice and may present to the Board of Adjustment any evidence or argument to support the contentions on appeal. The Land Use Authority that rendered the decision that is being appealed shall appear and present any evidence or argument it finds necessary to justify its decision. The Board of Adjustment shall keep a record of its proceedings and shall make written findings and conclusions of all of its decisions.

6. The appellant has the burden of proving that the Land Use Authority erred.

7. The Board of Adjustment shall presume that the decision of the Land Use Authority that is being appealed is correct, and shall only modify the decision if there is substantial evidence presented at the hearing of the Board of Adjustment that the Land Use Authority erred in its application or interpretation of the land use ordinances

8 Only decisions applying or interpreting the adopted land use ordinances of the City may be appealed to the Board of Adjustment A person may not appeal, and the Board of Adjustments, in its duties as an Appeal Authority may not consider, any appeal of a legislative decision of the City Council, such as a decision to adopt or amend any land use (zoning or subdivision) ordinance of the City

9 Appeals may not be used to waive or modify the terms of requirements of the land use ordinance, except as specifically allowed by the ordinance

10 The Board of Adjustment shall render its decision on the appeal within fifteen (15) days from the date that the hearing is held The Board may affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Land Use Authority.

11 A decision of the Board of Adjustment takes effect on the date when the Board issues a written decision, or as otherwise provided by ordinance A written decision, or other event as provided by ordinance constitutes a final decision under Subsection 10-9a-802(2)(a) or a final action under Subsection 10-9a-801(4) of the Utah State Code

2.3.5 DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISIONS.

1 Any person adversely affected by any decision of the Board of Adjustment may petition the district court for a review of the decision However, no person may challenge in district court the City's land use decision until that person has exhausted the person s administrative remedies as provided in Utah State Code Title 10 Chapter 9a Part 7 Appeal Authority and Variances, if applicable

2 In the petition the petitioner may only allege that the Board of Adjustment's decision was arbitrary, capricious or illegal

3 (a) The petition is barred unless it is filed within 30 days after the Board of Adjustment s decision is final

(b)(i) The time under 3(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Utah Code Annotated 63-34-13 until 30 days after

A the arbitrator issues a final award or

B the private property ombudsman issues a written statement under Utah Code Annotated 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator

(ii) A tolling under Subsection 3(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection 3(a) to file a petition has expired does not affect the time to file a petition

4. (a) The Board of Adjustment shall transmit to the district court the record of its proceedings including its minutes, findings, orders, and if available, a true and correct transcript of its proceedings.

   (b) If the proceeding was taped, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

5. (a)(i) If there is a record, the district court's review is limited to the record provided by the Board of Adjustment.

   (ii) The court may not accept or consider any evidence outside the Board of Adjustment record unless that evidence was offered to the Board and the court determines that it was improperly excluded by the Board.

   (b) If there is no record, the court may call witnesses and take evidence.

6. The court shall affirm the decision of the Board of Adjustment if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

7. (a) The filing of a petition does not stay the decision of the Board of Adjustment.

   (b)(i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated 63-34-13, the aggrieved party may petition the Board of Adjustment to stay its decision.

   (ii) Upon receipt of a petition to stay, the Board of Adjustment may order its decision stayed pending district court review if the Board of Adjustment finds it to be in the best interest of the City.

   (iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Utah Code Annotated 63-34-13, the petitioner may seek an injunction from the district court staying the Board of Adjustment's decision.

ARTICLE 2.2 **PLANNING COMMISSION (Ord. 98-01:1/28/98, Amended by Ord. 2006-17, 11/14/06)**

2.2.1 **Establishment of Planning Commission.** Pursuant to authority granted in Title 10-9a-301 UCA 1953, as amended, there is hereby created a Planning Commission The Planning Commission shall consist of seven (7) members The members shall be appointed by the Mayor with the advice and consent of the City Council One of the seven (7) members of the Planning Commission will be an ex officio member appointed by the Mayor with the advice and consent of the City Council from its own members

Members shall be selected without respect to political affiliation The legislative body may fix per diem compensation for the members of the Planning Commission, based on necessary and reasonable expenses and on meetings actually attended

2.2.2 **Term of Office** (Amended by Ord No 2007-04, 4/10/07) Each member of the Planning Commission shall serve for a term of six (6) years and/or until his successor is appointed, provided that the first appointments shall be for such terms that the term of one member shall expire annually The term of office for each member shall commence on the first day of January The term of the ex officio member shall be determined by the Mayor The Mayor may remove any member of the Planning Commission for cause The Planning Commissioner being removed may appeal to the City Council and may request a public hearing be held Any vacancy occurring on said Commission by reason of death, resignation, removal or disqualification shall be filled in the same manner as an original appointment for the unexpired term

2.2.3 **Organization.**

1. At its first meeting in January of each odd year, the Planning Commission shall elect one of its members as Chair and a second member as Vice-Chair The Chair shall serve for a term of two years and until a successor is chosen A vacancy in the position of Chair or Vice-Chair shall be filled for the unexpired term by election at the next meeting of the Planning Commission A person may be elected to serve consecutive terms as Chair

2 The Chair shall preside at all meetings of the Planning Commission In the absence of the Chair, the Vice-Chair shall preside If both the Chair and Vice-Chair are absent, the Commission shall elect one of its members as Chair Pro-Tem to preside at that meeting

3 The ex officio member shall present such matters to the City Council as are appropriate and receive such instruction and guidance as required from the City Council and the Mayor as may affect the Planning Commission

4. Subject to the approval of the City Council, the Planning Commission shall adopt Rules of Procedure consistent with this Code for its own organization and for the transaction of business Such rules shall not be inconsistent with any directive or instruction received from the City Council

5 Meetings of the Planning Commission shall be held as frequently as the Commission deems advisable

6. Reports of official acts and recommendations of the Planning Commission shall be made in writing to the City Council and shall indicate how each member of the Commission voted with respect to such act or recommendation Any member of the Commission may also make a concurring or dissenting report or recommendation to the City Council whenever he or she so desires

7 The ex officio member will not vote except to break a tie or in the absence of three (3) regular members (Amended 5/26/98)

2.2.4 **Duties and Powers.** The Planning Commission shall:

1. make a recommendation to the City Council for:

    a. a general plan and amendments to the general plan;

    b. land use ordinances, zoning maps, official maps, and amendments;

    c. an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

    d. an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and

    e. application processes that:

        1. may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and

        2. shall protect the right of each:

            i. applicant and third party to require formal consideration of any application by a land use authority;
            ii. applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
            iii. participant to be heard in each public hearing on a contested application.

2. prepare and recommend a proposed ordinance to the City Council that regulates the subdivision of land; prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the City.

3. have the authority to grant concept and preliminary approval for subdivisions that fully comply with Alpine City ordinances, and recommend final approval to the City Council for subdivisions that are in compliance.

4. review and make a recommendation to the City Council on site plans for buildings not located in an approved subdivision for compliance with Alpine City ordinances prior to the issuance of a building permit (see Article 4.14 for more information).

5. as a land use authority, hear and decide applications for conditional use permits, other than administrative conditional uses (see Article 3.23 for more information).

6. make a recommendation to the City Council for any extension and reconstruction of non-conforming buildings or buildings housing a non-conforming use (see Article 3.22 for more information).

7. follow the appropriate procedures for public hearings and public meetings and shall give proper public notice as applicable.

2.2.5 Additional Duties and Powers. The Planning Commission:

1. May conduct hearings and meetings with interested property owners, officials and citizens in the process of carrying out its functions.

The following information shall be on the sign:

1. Current zoning of the property and proposed zoning;
2. Number of acres; and
3. Date, time, and place of the first public hearing at which the zone change will be considered by the Planning Commission.

3.1.10 **OFFICIAL ZONE MAP**. The location and boundaries of each of the zones are shown on the Official Zone Map of Alpine City, Utah - (Revised by Ord. 94-02: 2/8/94). Said Map is hereby declared to be an official record and a part of this Ordinance and said Official Zone Map and all notations, reference and other information shown thereon shall be as much a part of this Ordinance as if the matters and other information set forth by said map were fully described herein. Said Official Zone Map shall be identified by the signature of the Mayor of the City, attested to by the City Recorder, and placed in the office of the City Recorder. Whenever such amendments or changes are made in zone boundaries, such amendments or changes shall be made by the City Recorder on the Official Zone Map promptly.

No changes of any nature shall be made in the Official Zone Map except in conformity with the procedure set forth under Section 3.1.8 of this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided in this Ordinance.

Regardless of the existence of purported copies of the Official Zone Map, which may from time to time be made or published, the Official Zone Map, which shall be located in the office of the City Recorder shall be the final authority in determining current status.

3.1.10.1 **Boundaries of Zones**. Where uncertainty exists with respect to the boundaries of various zones, the following rules shall apply:

1. Where the indicated boundaries on the zone map are approximately street or alley lines, said street or alley shall be construed to be the zone boundaries.
2. Where the indicated boundaries are approximately lot lines, said lot lines shall be construed to be the zone boundaries unless other indicated.
3. Where land has not been subdivided into lots and blocks, the zone boundaries shall be determined by use of the scale of measurement shown on the map.

3.1.10.2 **Declaration.** In establishing the zones, the boundaries thereof, and other regulations and restrictions applying within each of the zones, due and careful consideration was given, among other things, to compatibility with the General Plan, suitability of the land for particular uses, and the character and intent of the zone; with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

3.1.11 **DEFINITIONS** (Amended by Ord. 2004-14 on 9/28/04)

1. **ACCESSORY APARTMENT**. A subordinate dwelling unit within and part of a principle dwelling which has its own eating, sleeping and sanitation facilities.

2. **ACCESSORY BUILDING**. A detached subordinate building, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot or parcel of land with the main building or use.

3. **AGRICULTURE**. The tilling of soil, the raising of crops, horticulture, the gardening, but not including the keeping or raising of domestic animals or fowl, except household pets, and not including any agricultural industry or business such as fruit packing plants, commercial egg production, or similar uses.

4 **AVERAGE SLOPE OF LOT** The average slope of a lot, expressed as the percent of slope, determined in accordance with the following formula

$$S = \frac{00229 \ (I) \ (L)}{A}$$

Where S = average percent of slope
A = total number of acres in the parcel
L = summation of length of all contour lines, in feet
I = contour interval, in feet

5 **BUILDABLE AREA.** (Ord 94-02, 2/8/94) A lot or portion thereof possessing all of the following physical characteristics

a The area contains no territory having a natural slope of twenty (20) percent or greater,
b The area contains no territory which is located in any identified flood plain or within any recognized inundation zone mud flow zone or zone of deformation, or lands subject to earth slippage, landslide or rockfall,
c The engineering properties of the soil provide adequate structural support for the intended use,
d The area does not possess any other recognized natural condition which renders it unsafe for building purposes,
e The area is within the building setback envelope as determined in accordance with the setback provisions of the zone, and
f The area is readily capable of vehicular access from the adjacent public street over a driveway having a slope of not more than twelve (12) percent with no cut or fill greater than five feet

6 **BUILDING** Any structure having a roof supported by columns or walls, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind

7 **CIVIC BUILDING.** A structure owned by the City and used for governmental purposes, including administrative buildings (City Hall) fire stations, police stations libraries, but not including shop and repair facilities

8 **CONDITIONAL USE** A use of land that because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts

9 **CUSTOMARY RESIDENTIAL ACCESSORY STRUCTURE** A structure constructed on the same zoning lot as a dwelling and which is intended for the incidental and exclusive use of the residents of said dwelling, including but not limited to detached garages, carports, swimming pools tennis courts green houses storage buildings, and satellite dishes

10 **DEVELOPMENT.** Any change to a parcel of ground which alters it from its natural state in any way This includes clearing excavation grading, installation of any infrastructure or erection of any types of buildings

11 **DWELLING** A building or portion thereof designed exclusively for residential occupancy but not including hotels tourist cabins and boarding houses

12 **DWELLING, MULTIPLE-UNIT.** A building arranged to be occupied by two (2) or more families the structure having two (2) or more attached dwelling units

13. **DWELLING, SINGLE-UNIT.** A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

14. **FAMILY**. An individual or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than four (4) persons, (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities.

15. **FENCES**. A fence shall include any tangible barrier, an obstruction of any material, a line of obstacles, lattice work, screen, wall, hedge, or continuous growth of shrubs with the purpose of preventing passage or view across a boundary or lot line. **(Ord. 2004-13, 9/28/04)**

    a Privacy fences are structures where the field of vision through the fence is less than 50%.

    b. Open-style fences are structures where the field of vision through the fence is 50% or greater.

16. **FRONTAGE.** The width of the lot or parcel of land measured at the required front setback-line.

17. **GARAGE/CARPORT (PRIVATE)**. An accessory building for the parking or temporary storage of automobiles, but which does not involve commercial repairing or storage. On a lot with a dwelling, a garage or carport shall be considered a part of the dwelling if the two structures have one or more walls or a roof in common. Where a garage or carport is thus a part of a dwelling, it shall require the same side setback as a dwelling in the same district. Where a garage or carport is not a part of a dwelling, it shall be considered an accessory building.

18. **GEOLOGIC HAZARD**. A hazard inherent in the surface or subsurface of the earth or artificially created, which is dangerous or potentially dangerous to life, property, or improvements, due to movement, failure, or shifting of earth.

19. **GUEST HOUSE**. An accessory building constructed on the same zoning lot as the principle Single-Unit dwelling to be used for temporary occupancy.

20. **HANDICRAFT PRODUCTION**. Production of an individual's one-of-a-kind objects for sale on the site.

21. **HOME OCCUPATION**. Any gainful occupation, service, profession or similar activity conducted in a consistent and ongoing manner within a dwelling. Business activity consisting primarily of the sale of goods produced elsewhere on the premises (i.e. retail sales establishment) shall not qualify as a home occupation.

22. **HOUSEHOLD PETS.** Animals or fowl ordinarily permitted to a residence and kept for company or pleasure, such as dogs, cats, fish and canaries. Household pets do not include inherently or potentially dangerous animals or fowl, or those normally considered agricultural livestock.

23. **IMPERVIOUS MATERIAL**. Matter that is impenetrable as by moisture.

24. **LOT.** A parcel or unit of land describable either by metes and bounds, or by other legal plat designation held or intended to be held in separate ownership or leasehold or a parcel or unit of land shown as a lot or parcel on a recorded subdivision map, or shown on a plat used in the lease or sale of land resulting from the division of a larger tract into smaller units.

24a. **LOT, CORNER.** Shall mean a lot located at the junction of and fronting on two (2) or more intersecting streets.

25. **MOBILE HOME.** A detached dwelling designed for long-term occupancy and to be transported on its own wheels, or on a flatbed or other trailer or detachable wheels, and arriving at the site where it is to be occupied as a complete dwelling unit ready for occupancy except for connections to utilities and other minor work. Removal of such wheels or placing such dwelling unit on a foundation shall not remove such unit from classification as a mobile home. Excluded from this definition shall be those permanent dwelling structures that are constructed of component parts that are transported to the building site and which meet structural requirements of the Uniform Building Code and which are finished with exterior building material that is typical of permanent residential buildings.

26. **NON-CONFORMING USE.** A building or structure, or portion thereof, or use of a building or land which does not conform to use regulations for the district in which it is situated, but which is in conformity with said regulations, if any, at the time of its establishment.

27. OFF STREET PARKING. An area adjoining a building providing for the parking of automobiles which does not include a public street but has convenient access to it.

28. **OFFICE, PROFESSIONAL.** A building or space used by persons such as accountants, architects, artists, dentists, designers. engineers, lawyers. physicians, realtors, teachers, and others who. by virtue of training and for license, are qualified to perform services of a professional nature, and where storage of goods and sale of merchandise is minimal and secondary to performance of the service.

29. **OPEN SPACE.** The use of land which leaves soil generally undisturbed and upon which natural vegetation, whether or not native to the area, occupies the major visible aspect of the land.

30. **PERMITTED USE.** A use of land for which no conditional use permit is required.

31. PUBLIC USE. A use operated or supervised exclusively by a public body, such use having the purpose of serving the public health, safety, or general welfare, and including uses such as public schools, parks, playgrounds, and other recreational facilities, administrative and service facilities, and public utilities.

32. **QUASI PUBLIC USE.** A use operated by a private non-profit educational, religious, recreational, charitable or philanthropic institution, having the primary purpose of serving the general public, such as churches, private schools, hospitals and similar uses.

33. **RECREATION, PUBLIC.** Recreation facilities operated by a public agency and open to the public with or without a fee.

34. **SIGN.** Any device for visual communication to the public displayed out-of-doors including signs painted on exterior walls, and interior illuminated signs, to be viewed from out-of-doors, but not including a flag. badge, or ensign of any government or government agency.

35. **STREET, PUBLIC.** A thoroughfare which has been dedicated and accepted by proper public authority (or abandoned to the public) or a thoroughfare not less than twenty-four (24) feet wide which has been made public by right of use and which affords the principal means of access to abutting property.

36. **STRUCTURE.** Anything constructed, the use of which requires fixed location upon the ground, or attached to something having a fixed location upon the ground. and which creates an impervious material on or above the ground; definition includes "building."

37. **YARD.** A required space on a lot other than a court, unoccupied and unobstructed from the ground upward. by buildings, except as otherwise provided herein.

38 **YARD, FRONT** A space between the front of the main building on a lot and the front lot line or line of an abutting street or right-of-way and extending across the full width of a lot The depth (or setback) of the front yard is the minimum distance between the front lot line, and the front-most part of the primary structure of the nearest main building at the foundation level. (Primary structure includes overhangs, porches, and decks)

39 **YARD, REAR** A space between the back wall of the nearest main building extending the full width of the lot and the lot line that is most distant from, and is most nearly parallel with, the front lot line If the rear lot line is less than ten feet (10') in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a ten foot (10') line parallel to the front line, lying wholly within the lot for the purpose of establishing the minimum rear yard The depth (or setback) of the rear yard is the minimum distance between the rear lot line and the rearmost part of the primary structure of the nearest main building at the foundation level (Primary structure includes overhangs, porches and decks See drawing in Appendix A) **(Ord. 2004-13, 9/28/04)**

40 **YARD, SIDE** A yard that is neither a front yard nor a rear yard The depth (or setback) of the side yard is the minimum distance between the side lot line and the nearest part of the primary structure of the nearest main building at the foundation level (Primary structure includes overhangs porches and decks)

41 **ZONING LOT** (Ord 94-02, 2/8/94) A lot or parcel of land which

a Meets all area (lot size), frontage (width), setback (yard), and other zoning requirements applicable within the zone in which it is located,
b Abuts upon and has direct access to a street which has been dedicated to the City or otherwise accepted by the City as a City Street,
c Is served by the minimum level of improvements required for issuance of a building permit or for which the construction of the minimum level of improvements is secured through the posting of a performance guarantee, and
d Is shown as a separate lot on the final plat of a subdivision or similar development, which has been approved in accordance with the applicable ordinance, or is legally exempted from compliance with said ordinance A parcel which is part of an unapproved or illegal subdivision shall not qualify as a zoning lot

3.1.12 FEES AND CHARGES (Ord 94-02, 2/8/94) All costs for the processing of applications for zone changes, subdivision reviews, conditional use approvals, Board of Adjustment rulings, and similar actions required under the terms of this ordinance shall be borne by the applicant The City Council may, by resolution, establish fees for the processing of such applications and the administration of this ordinance and provide for the assessment and collection thereof

3.1.13 CRITERIA FOR DETERMINING LOT WIDTH AND AREA REQUIREMENTS (Ord. 97-02, 2/25/97)

General criteria for determining setback requirements

1 All set backs are to be measured to the foundation of the building
2 An abutting fire place (up to two feet), bay window (up tc two feet) and steps to basement shall not be included in set back measurement
3 A patio or deck less that (18) eighteen inches in height from ground surface shall be allowed within ten (10) feet of the rear property line

ARTICLE 3.4 C-R 40,000 COUNTRY RESIDENTIAL ZONE - 1 ACRE (CR-1 Created by Ord. 91-01, 4/9/91 and amended by Ord. 95-04, 2/3/95)

3.4.1 LEGISLATIVE INTENT

The CR-40,000 Zone includes the territory, generally located around the periphery of the City, considered appropriate for low density residential development. While much of the land is presently used for agriculture, or is vacant or wildland, the zone does contain several single-unit dwellings on large lots (one acre or larger). Also included in the zone are those areas which as a result of the presence of steep slope, adverse soil characteristics, flood hazard, mudflow or earthquake potential, wildfire hazard or similar critical and sensitive natural conditions are considered environmentally fragile.

It is hereby declared to be the intent and purpose of the City Council in establishing the CR-40,000 Zone:

1. To delineate environmentally sensitive areas within the City and to establish standards and guidelines for the uses and development activities occurring therein which recognize and appropriately balance:

    1) the need for the preservation of the natural environmental conditions.
    2) the need for mitigation of potentially adverse or unsafe conditions arising from development activities,
    3) the protection of the interests of subsequent purchasers and occupants, and
    4) the rights of owners to the reasonable use of their property.

2. To avoid or mitigate the effect of natural hazards from earthquakes, landslides, floods, fires and similar calamities and to reduce the potential for subsequent public involvement or expenditure in mitigation of such adverse or unsafe conditions occurring as a result of the disruption of natural conditions by development activity.

3. To protect and conserve the culinary water supply, sensitive vegetation, soil, wildlife habitat and other natural resources within the area.

4 To facilitate and encourage the location, design, and construction of uses, development projects and building sites in the zone area which provide maximum safety and human enjoyment consistent with the natural limitations and the need for protection of the environment.

5. To preserve the aesthetic appearance of the landscape. Because of the fragile nature of the land in this zone, special conditions and requirements are attached to developments occurring therein to more effectively promote the purposes stated above and to mitigate the potential adverse aspects of developments in the area. The requirements hereinafter set forth are considered the minimum necessary to accomplishments of the purpose and intent in establishing this zone.

3.4.2 PERMITTED USES

The following uses of land shall be permitted upon compliance with the applicable standards and conditions set forth in this ordinance.

1. Single-unit detached dwellings when located on a lot in a recorded subdivision and subject to compliance with the applicable conditions within the zone.

2. Agriculture including the raising of row crops, grains and fruits.

3 The raising care and keeping of livestock and fowl for family food or recreation subject to the provisions of Section 3 21 9 of Supplementary Regulations

4 Public park and recreation developments

5 Customary residential accessory structures which are an integral part of and incidental to an approved dwelling

6 Customary household pets

3.4.3 CONDITIONAL USES

The following buildings structures and uses of land may be permitted upon compliance with the standards and conditions set forth in this ordinance and after approval has been given by the designated review body However no development will be permitted where any part of the zoning lot is above an elevation of 5350 feet mean sea level except as noted in Article 3 15 of this Code

1 Single family dwellings (Conventional construction) when proposed for placement on a lot not in a recorded subdivision subject to compliance with the applicable conditions within the zone and approval of a site plan by the Planning Commission

2 Subdivisions projects subject to compliance with the applicable requirements of the subdivision ordinance except that (a) where any portion of the area included within the subdivision shall lie within the territory designated within the Sensitive Lands Overlay Zone (SLO zone) or (b) as the City may designate the subdivision shall be developed only under the provisions of Article 3 9 of the Alpine City Development Code relating to Planned Residential Developments

3 Planned Residential Developments (PRD) subject to compliance with the provisions of Article 3 9 of the Alpine City Development Code

4 Water sewer and utility transmission lines and facilities required as an incidental part of development within the zone, and subject to the approval of a site plan by the planning commission

5 Motor vehicle roads and rights-of-way subject to compliance with City standards for design and construction for such uses and upon approval of a site plan by the planning commission

6 Home Occupations subject to the provisions of Section 3 23 7 3 of the Alpine City Development Code

7 Accessory Apartments subject to the applicable provisions of Section 3 23 7 1 of the Alpine City Development Code

8 Guest Houses subject to the applicable provisions of Section 3 23 7 2 of the Development Code

9 Schools Churches Hospitals (Human Care) and similar quasi public buildings subject to approval by the Planning Commission

10 Incidental Produce Stands subject to the provisions of Article 3 23 7 4 of the Development Code (Ord 96-05 4/10/96)

11 Buildings and other structures for the storage and keeping of agricultural products and machinery

12. Plant nurseries and tree farms, but not doing retail sale of materials on site.

13. Civic Buildings.

3.4.4 LOT AREA AND WIDTH REQUIREMENTS - SINGLE FAMILY DWELLINGS.

The minimum area and width requirements of a zoning lot shall be determined upon the average slope of the lot and shall conform to the following schedule:

Average Slope of Lot*	Minimum Area (in sq. feet)	Minimum Width (at min front setback)
0 - 9.9%	40,000 (.92 ac.)	110 ft.
10 - 14.9%	60,000 (1.36 ac.)	150 ft.
15 - 19.9%	80,000 (1.84 ac.)	200 ft.
20 - 24.9%	120,000 (2.76 ac.)	250 ft.
25%+	Not Buildable	Not Buildable

* Average Slope of Lot shall be Determined in accordance with the provisions of Section 3.1.11.4 of this Development Code.

3.4.5 SETBACK REQUIREMENTS (see Appendix for drawing)

3.4.5.1 Dwellings and other Main Buildings (Ord. 97-02, 2/25/97)

All dwellings and other main buildings shall be setback from the lot boundary lines as follows:

1. Front Yard. The minimum front yard for all main dwelling structures shall be thirty (30) feet (measured from the front property line).

2. Side Yard - Interior Lots. For single-unit detached dwellings, main buildings shall be situated on the lot to allow for a side yard on each side of the main building the aggregate width of which shall be at least thirty (30) feet. Neither side yard shall be less that twelve (12) feet.

3. Side Yard - Corner Lots. On corner lots, the front, rear and side yard requirements shall be the same as above, except that the set back on any side that faces onto a public street shall be not less than thirty (30) feet.

4. Rear Yard - Interior Lots. All main dwelling structures shall be set back from the rear property line a distance of not less than thirty (30) feet.

5. Rear Yard - Corner Lots. Rear yard set back for dwellings on corner lots shall be the same as that required for interior lots.

3.4.5.2 Accessory Buildings.

All accessory buildings shall be located in accordance with the following: (Amended by Ord. 2006-14, 9/12/06)

1. Setback from Main Building. Accessory buildings shall be set back not less than twelve (12) feet from the main building. Accessory buildings which are located twelve (12) feet or closer to a main building shall be considered as part of the main building. Where no main building exists on a lot, a detached accessory building shall be set back not less than forty (40) feet from the front lot line.

2. Side Setback - Corner Lot, Side Abutting a Street. Accessory buildings shall be set back not less than forty (40) feet from the side lot line which abuts on a street.

3. Front Setback. Accessory buildings shall be set back not less than forty (40) feet from the front property line.

4. Side and Rear Setback - Interior Lot Line. Accessory buildings shall be set back not less than fifteen (15) feet from the rear lot line and ten (10) feet from the side lot line, except that no minimum rear or side setback shall be required when all the following conditions are met:

   a. The accessory building is located more than twelve (12) feet from an existing dwelling on the same or adjacent lot;

   b. The accessory building contains no openings on the side contiguous to the lot line;

   c. No drainage from the roof will be discharged onto an adjacent lot;

   d. The accessory building shall be constructed of non-combustive materials or have fire resistive walls rated at one (1) hour or more;

   e. The building will not be placed on land designated as a recorded easement, such as a utility or trail easement; and

   f. The building will not be taller than ten (10) feet to the top of the roof line.

3.4.6 **ACCESS REQUIREMENTS.** Each lot shall abut upon and have direct access to an existing City maintained street or a street which has been formally accepted by action of the City Council. The distance of said abutting side shall be not less than the minimum lot width requirement of the zone except that the length of said abutting side may be reduced to not less than eighty (80) feet when the lot abuts upon a cul-de-sac or sharp curve and the side lot lines radiate in such a manner that the width of the lot, measured between the side lot lines at the minimum front setback line will meet or exceed the minimum width requirements of the zone.

3.4.7 UTILITY REQUIREMENTS

3.4.7.1 **Culinary Water.** All dwellings and other structures to be used for human occupancy shall be served by the City's water system. The system serving the dwelling shall be capable of providing water to the dwelling at a volume sufficient for both culinary and fire fighting purposes and at a pressure of not less than forty (40) psi as determined by the City Engineer.

3.4.7.2 **Domestic Sewage Disposal.** All dwellings and other structures intended for human occupancy shall be served by the City's central sewage collection system.

3.4.8 BUILDING REQUIREMENTS

3.4.8.1 **Height of Dwellings.** The maximum height of any dwelling or other main building shall be thirty- four (34) feet, as determined in accordance with the provisions of Section 3.21.8 of the Alpine City Development Code. (Ord. 96-15, 12/18/96).

3.4.8.2 **Height of Accessory Buildings.** The maximum height of any accessory building shall be twenty (20) feet as measured from the average finished grade of the ground surface adjacent to the foundation of the structure to the top of the ridgeline.

For every one (1) foot of additional height above twenty (20) feet. an additional two (2) feet of side yard and rear yard setback will be required. The maximum height of an accessory building as measured to the ridgeline shall be thirty (30) feet.

3.4.8.3 **Exceptions to Height Requirements.** Chimneys, flag poles. television antennas, and similar ancillary structures not used for human occupancy shall be excluded in determining height. provided that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building.

3.4.8.4 Buildable Area **Required** (Ord. 97-02, 2/25/97)

1. Each zoning lot shall contain at least one Designated Buildable Area of not less than five thousand (5,000) sq. ft. All dwellings and other habitable structures and accessory buildings shall be located within the Designated Buildable Area.

2. Each Designated Buildable Area shall conform to the criteria for qualification as a "Buildable Area" as defined in this Ordinance. Except that the Planning Commission may approve or require the placement of the Designated Buildable Area in a location within the lot which does not conform to one or more of the criteria for Buildable Area, upon a finding that the proposed Designated Buildable Area: (1) will more adequately accommodate subsequent development of the lot, and (2) will not constitute a potential hazard to life or property, and/or (3) will serve to diminish the negative impact of subsequent development upon the lot or community (i.e. extra-ordinary construction of driveway access, mitigate visual intrusion of structure on ridge line).

3. Where considered appropriate, the Planning Commission may require a subdivider to identify a Designated Building Area on one or more of the lots within a proposed subdivision. The location of each Designated Buildable Area shall be shown upon the preliminary plan and shall also be identified and described on the final plat, together with a notation to the effect that all main and accessory buildings shall be located within the Designated Buildable Area.

4. On any lot where a Designated Buildable Area is shown, the boundary of said area shall be deemed to constitute the setback requirements applicable to the lot. Where an entire lot area qualifies as a Buildable Area, no designation on the final plat shall be required.

5. Except as permitted pursuant to Paragraph 3.4.8.4.2 above. any portion of a lot which has been graded to produce a percent of slope to qualify under the Buildable Area, criteria shall be excluded from consideration as part of the Designated Buildable Area.

3.4.9 **HILLSIDE PROTECTION REQUIREMENTS.** Where development in the CR-40,000 zone falls within the Hillside Protection Overlay Zone, the requirements of Article 3.12.9 apply.

ARTICLE 3.5 CE-5 CRITICAL ENVIRONMENT ZONE (Ord. 95-28, 11/28/95)

3.5.1 LEGISLATIVE INTENT AND PUBLIC PURPOSE.

The CE-5 Zone consists primarily of the more mountainous areas of the City which, because of the presence of steep slopes, unique soil characteristics, wild fire hazard or similar natural condition are considered environmentally sensitive.

It is the intent and purpose of the City Council in establishing the zone to set minimum standards for the use of land within the zone and to establish guidelines for development activities thereon which recognize and balance the following:

1. The need to preserve sensitive environmental conditions;

2. The need to mitigate potentially unsafe conditions in the area and prevent development that might increase hazards due to such conditions;

3. The rights of property owners to the reasonable use and enjoyment of their land; and,

4. The need to preserve a healthy, safe and aesthetic living environment for occupants of the zone and the surrounding community.

It is anticipated that uses in the zone will be limited to one-family dwellings in naturalistic settings with associated personal uses and structures. Such uses will be permitted in those portions of the zone which are most suitable for development activity (development cluster areas) interspersed with large and undisturbed open space areas.

3.5.2 PERMITTED USES. The following buildings, structures and uses of land shall be permitted upon compliance with the conditions set forth in this Ordinance.

1. The keeping and raising of animals and fowl for family food production or enjoyment, subject to conditions for such use as set forth in Section 3.21.9 of Supplementary Regulations of this Development Code.

2. Agriculture, including the raising of row crops, grains and fruits.

3. Customary household pets.

3.5.3 CONDITIONAL USES. The following buildings, structures, and uses of land may be permitted upon compliance with the provisions of this ordinance and after approval shall have been given from the designated review agency. However, no development will be permitted where any part of the zoning lot is above an elevation of 5350 feet mean sea level except as noted in Article 3.15 of this code.

1. Single family dwellings (Conventional construction) when proposed for placement on a lot of record existing at the time of the territory is placed into the CE-5 Zone, or a lot within a Planned Residential Development, in either case, subject to compliance with the applicable conditions within the zone and approval of a site plan by the Planning Commission.

2. Planned Residential Developments (PRD), subject to compliance with the provisions of Article 3.9 of Alpine City Development Code.

3. Water, sewer and utility transmission lines and facilities required as an incidental part of development within the zone, and subject to the approval of a site plan by the Planning Commission.

4. Motor vehicle roads and rights-of-way subject to compliance with City standards for design and construction for such uses and upon approval of a site plan by the Planning Commission.

5. Home Occupations, subject to the provisions of Section 3.23.7.3 of the Development Code.

6. Accessory Apartments, subject to the applicable provisions of Section 3.23.7.1 of the Development Code.

7. Guest Houses, subject to the applicable provisions of Section 3.23.7.2 of the Development Code.

8. Park and recreation enterprises when owned and operated by a public agency.

9. Plant nurseries and tree farms, but not including retail sales of materials on site.

10. Incidental Produce Stands, subject to the provisions of Section 3.23.7.4 of the Development Code. (Ord 96-05, 4/10/96)

3.5.4 AREA AND WIDTH REQUIREMENTS

There shall be no minimum area or width requirements except as may be set forth on the final plat of a Planned Residential Development. There shall be no building or impervious materials on slopes over 25%.

3.5.5 SETBACK REQUIREMENTS (see Appendix for drawing)

Same as required within the CR-40,000 Country Residential Zone or as set forth on the final plat of the Planned Residential development, as applicable.

3.5.5.1 Dwellings and other Main Buildings (Ord. 97-02, 2/25/97)

All dwellings and other main buildings shall be setback from the lot boundary lines as follows:

1. Front Yard. The minimum front yard for all main dwelling structures shall be thirty (30) feet (measured from the front property line).

2. Side Yard - Interior Lots. For single-unit detached dwellings, main buildings shall be situated on the lot to allow for a side yard on each side of the main building the aggregate width of which shall be at least thirty (30) feet. Neither side yard shall be less that twelve (12) feet.

3. Side Yard - Corner Lots. On corner lots the front. rear and side yard requirements shall be the same as above, except that the set back on any side that faces onto a public street shall be not less than thirty (30) feet.

4. Rear Yard - Interior Lots. All main dwelling structures shall be set back from the rear property line a distance of not less than thirty (30) feet.

5. Rear Yard - Corner Lots. Rear yard set back for dwellings on corner lots shall be the same as that required for interior lots.

3.5.5.2 **Accessory Buildings** (Amended by Ord 2006-14, 9/12/06)

All accessory buildings shall be located in accordance with the following

1 Setback from Main Building. Accessory buildings shall be set back not less than twelve (12) feet from the main building Accessory buildings which are located twelve (12) feet or closer to a main building shall be considered as part of the main building Where no main building exists on a lot, a detached accessory building shall be set back not less than forty (40) feet from the front lot line

2 Side Setback- Corner Lot Side Abutting a Street Accessory buildings shall be set back not less than forty (40) feet from the side lot line which abuts on a street

3 Front Setback Accessory buildings shall not be set back less than forty (40) feet from the front property line

4 Side and Rear Setback - Interior Lot Line Accessory buildings shall be set back not less than fifteen (15) feet from the rear lot line and ten (10) feet from the side lot line, except that no minimum rear or side setback shall be required when all the following conditions are met

a The accessory building is located more than twelve (12) feet from an existing dwelling on the same or adjacent lot

b The accessory building contains no openings on the side contiguous to the lot line,

c No drainage from the roof will be discharged onto an adjacent lot

d The accessory building shall be constructed of non-combustive materials or have fire resistive walls rated at one (1) hour or more,

e The building will not be placed on land designated as a recorded easement, such as a utility or trail easement, and

f The building will not be taller than ten (10) feet to the top of the roof line

3.5.6 ACCESS REQUIREMENTS

Each parcel shall abut upon and have direct access to an existing City maintained street or a street which has been formally accepted by action of the City Council The distance of said abutting side shall be not less than eighty (80) feet when the lot abuts upon a cul-de-sac or sharp curve and the side lot lines radiate in such a manner that the width of the lot, measured between the side lot lines at the minimum front setback line will meet or exceed the minimum width requirements of the zone

3.5.7 UTILITY REQUIREMENTS

3.5.7.1 **Culinary Water.** All dwellings and other structures to be used for human occupancy shall be served by the City's water system The system serving the dwelling shall be capable of providing water to the dwelling at a volume sufficient for both culinary and fire fighting purposes and at a pressure of not less than forty (40) psi as determined by the City Engineer

3.5.7.2 **Domestic Sewage Disposal** All dwellings and other structures intended for human occupancy shall be served by the City's central sewage collection system

3.5.8 BUILDING REQUIREMENTS

3.5.8.1 Height of Dwellings. The maximum height of any dwelling or other main building shall be thirty-four (34) feet as determined in accordance with the provisions of Section 3.21.8 of the Alpine City Development Code. (Ord. 96-15, 12/18/96)

3.5.8.2 Height of Accessory Buildings. The maximum height of any accessory building shall be twenty (20) feet as measured from the average finished grade of the ground surface adjacent to the foundation of the structure to the top of the ridgeline.

For every one (1) foot of additional height above twenty (20) feet, an additional two (2) feet of side yard and rear yard setback will be required. The maximum height of an accessory building as measured to the ridgeline shall be thirty (30) feet.

3.5.8.3 Exceptions to Height Requirements. Chimneys, flag poles, television antennas, and similar ancillary structures not used for human occupancy shall be excluded in determining height, provided that no such ancillary structure shall extend to a height in excess of fifteen (15) feet above the building.

3.5.8.4 Buildable Area Required (Ord 97-02, 2/25/97)

1. Each lot shall contain at least one Designated Buildable Area of not less than five thousand (5,000) sq. ft. All dwellings and other habitable structures and accessory buildings shall be located within the Designated Buildable Area.

2. Each Designated Buildable Area shall conform to the criteria for qualification as a "Buildable Area" as defined in this Ordinance. Except that the Planning Commission may approve or require the placement of the Designated Buildable Area in a location within the lot which does not conform to one or more of the criteria for buildable area, upon a finding that the proposed Designated Buildable Area: (1) will more adequately accommodate subsequent development of the lot, and (2) will not constitute a potential hazard to life or property, and/or (3) will serve to diminish the negative impact of subsequent development upon the lot or community (i.e. extra-ordinary construction of driveway access, mitigate visual intrusion of structure on ridge line).

3. Where considered appropriate, the Planning Commission may require a subdivider to identify a Designated Building Area on one or more of the lots within a proposed subdivision. The location of each Designated Buildable Area shall be shown upon the preliminary plan and shall also be identified and described on the final plat, together with a notation to the effect that all main and accessory buildings shall be located within the Designated Buildable Area.

4. On any lot where a Designated Buildable Area is shown, the boundary of said area shall be deemed to constitute the setback requirements applicable to the lot. Where an entire lot area qualifies as a buildable area no designation on the final plat shall be required.

5. Except as permitted pursuant to Paragraph 3.5.8.4.2 above, any portion of a lot which has been graded to produce a percent of slope to qualify under the buildable area, criteria shall be excluded from consideration as part of the Designated Buildable Area.

3.5.9 **HILLSIDE PROTECTION REQUIREMENTS.** Where development in the CE-5 zone falls within the Hillside Protection Zone, the requirements of Article 3.12.9 apply.

ARTICLE 3.9 PLANNED RESIDENTIAL DEVELOPMENTS (PRD) (Ord 95-04, 2/28/95) (Amended Ord 95-28, 11/28/95; Ord No. 2001-10, 4/10/01; Ord. 2004-13, 9/28/04)

3.9.1 PURPOSE AND INTENT

It is hereby declared to be the intent and purpose of the City Council in authorizing and establishing provisions relating to Planned Residential Developments (PRD)

1 To provide an alternative form of development for residential housing projects within the City which permits increased flexibility and encourages the preservation of open space and ingenuity in design while preserving a quality of residential amenities equal or superior to that possible under conventional subdivision requirements In order to qualify for approval as a Planned Residential Development it must be demonstrated that the proposed project will (1) adequately recognize and incorporate natural conditions present on the site, (2) efficiently utilize the land resources and provide increased economy to the public in the delivery of municipal services and utilities, (3) provide increased variety in the style and quality of residential dwellings available within the City, (4) preserve open space to meet the recreational, scenic and public service needs, and (5) do all the above in a manner which is consistent with the objectives of the underlying zone and under conditions which will result in the creation of residential environments of sustained desirability

2 To establish criteria and standards for the design of PRD projects by developers and also guidelines for evaluation by the City It shall be the City's sole discretion to decide if a project should be a PRD within the intent of the ordinance as noted above

3 To set forth the duties and responsibilities of developers and residents with respect to the approval construction and maintenance of such projects

4 To clearly establish the relationship of the City and the developer with respect to the review and approval of such projects

5 PRDs are permitted only in the CR-20,000, CR-40,000 and CE-5 Zones

3.9.2 PERMITTED USES

1 The following buildings structures and uses of land may be permitted within a PRD
Any use permitted within the underlying zone and those authorized under this section

2 Common areas and recreational facilities (public and private) including, but not limited to golf courses, swimming pools tennis courts club houses, recreational buildings, landscape parks and similar recreational facilities for the use and enjoyment of the residents

3 Streets fences walls utility systems and facilities, common storage areas ponds landscape features and similar uses and structures incidental to the main use

3.9.3 APPROVAL PROCEDURE - COMPLIANCE WITH RELATED REQUIREMENTS

3.9.3.1 Approval Procedure

1 The procedure to be followed in obtaining approval of a Planned Residential Development or any amendment thereto shall be the same as required for a subdivision The Planning Commission shall hold a public hearing on the application prior to concept approval and after a recommendation from the DRC

2. Upon receipt of all plats, plans, documents and other materials required for review and recommendation the Planning Commission shall consider the application and may recommend approval to the City Council upon a determination that:

3. All plans, documents, and other materials required for consideration have been submitted in a form suitable for evaluation, including a computer generated slope analysis in a compatible format specified by City Staff.

4. The plan conforms in all respects to the design standards and criteria applicable to the PRD.

5. The site is suitable for development of the PRD and that such a project will be consistent with existing development in the vicinity and compatible with the General Plan for the area.

6. The arrangement of the buildings, roadways, open space and other project elements will result in a safe and attractive living environment equal or superior to that which would be provided under lot by lot development.

7. The project, if developed, will accomplish the objectives for PRD's as stated under Article 3.9 in the Alpine City Development Code.

8. For PRD projects not meeting the review criteria the Planning Commission shall submit a recommendation of denial.

9. The Planning Commission may recommend changes in the plan in order to more fully accomplish the intent of the PRD provisions and compliance with the General Plan. Such changes may include but are not limited to, adjustments in the density or the number of structures, relocation of project elements, redesign of the road system, increase in the amount of open space and provisions for the disposal of surface water drainage.

3.9.3.2 **Compliance With Related Regulations.** In addition to the requirements of Article 3.9, a PRD project which includes the division of land into separate ownership shall also constitute a subdivision and shall conform to all applicable requirements for subdivisions. PRD projects which do not include the division of property shall be considered as a condominium development and shall conform to all applicable requirements for such projects.

3.9.4 DENSITY - DETERMINATION OF MAXIMUM BASE DENSITY - DENSITY BONUS PERMITTED

1. Maximum Total Density of Project. The total number of dwelling units permitted in a PRD (Maximum Total Density) shall be the sum of the Maximum Base Density Units, determined in accordance with the provisions of Paragraph 2 below, plus any Density Bonus Units which may be approved in accordance with the provisions of Paragraph 3 below.

2. Base Density. The Base Density for a project area shall be determined by the City upon a detailed slope analysis of the proposed project area in accordance with the following schedule.

1. **Base Density (in acres per dwelling unit)**

Percent of Slope	CR-20,000	CR-40,000	CE-5	CE-50
0 - 9.9%	.58 acre/unit	1.00 acre/unit	5.00 acres/unit	50.00 acres/unit
10 – 14.9%	.86 acre/unit	1.50 acres/unit	7.50 acres/unit	50.00 acres/unit
15 – 19.9%	1.15 acres/unit	2.00 acres/unit	15.00 acres/unit	50.00 acres/unit
20 – 24.9%	1.72 acres/unit	3.00 acres/unit	30.00 acres/unit	50.00 acres/unit
25 – 29.9%	2.30 acres/unit	4.00 acres/unit	50.00 acres/unit	50.00 acres/unit
30+%	5.00 acres/unit	5.00 acres/unit	50.00 acres/unit	50 acres/unit

Example of Base Density Slope Calculations (amended by Ord 2004-13 on 9/28/04)

Base Density Slope (in acres per dwelling unit)

Examples of Base Density Slope Calculations: 25 acres in the CR-20,000 zone.

(Allowable Lots = Area of acres with Slope Range/Required acre area per dwelling unit with the Slope Range

Percent of Slope	Area Within Slope Range (acres)	Required Area Per Dwelling Unit (acres)	Allowable Lots
0 - 9.9%	7.5	0.58	12.93103448
10 – 14.9%	5.5	0.86	6.395348837
15 – 19.9%	4	1.15	3.47826087
20 – 24.9%	3.5	1.72	2.034883721
25 – 29.9%	2.5	2.3	1.086956522
30 + %	2	5	0.4
TOTAL	25 Acres		26.3 Lots

2. **Bonus Density - Open Space Requirement:** As part of the PRD the following open space is to be dedicated to Alpine City as per Section 3.9.7.

Zone District	% of Total Project Area as Common Open Space
CR-20,000	25%
CR-40,000	25%
CE-5	50%

3. **Bonus for Natural Open Space**

Amount of bonus permitted: A density bonus may be granted by the City Council to a PRD project subject to the prior recommendation of the Planning Commission and a finding that the density bonus is justified. The Bonus Density (BD) eligible for award for a specific project shall be as set forth on the following schedule.

Maximum Bonus Amount

Zone District	% of Base Density
CR-20,000 Zone	20%
CR-40,000 Zone	25%
CE-5 Zone	30%
CE-50 Zone	0%

4. **Bonus Density Criteria:** Any award of Bonus Density shall be as determined by the City in accordance with the following density bonus criteria.

Bonus Amount (% Bonus Density)	Criteria Award of Bonus
1% of Bonus Density (BD) for each 1% of Natural Open Space	By providing additional open space in excess of the minimum required as per Section 3.9.7.

5. Examples of Bonus Density

   25 acres in the CR-20,000 zone with 5% slope

   (1) Base Density - 43 lots
   (2) Bonus Density - If developer donates 10% more land for open space (2.5 acres of land), he would receive 4 additional lots.

   43 base density lots x 110% = 47 lots

   25 acres in the CR-40,000 zone with 5% slope

   (1) Base Density - 25 lots
   (2) Bonus Density - If developer donates 10% additional land for open space (2.5 acres of land), he would receive 3 additional lots.

   25 base density lots x 110% = 28 lots

6. Developed Open Space Bonus

   Developed useable open space shall be determined on a case-by-case basis and evaluated by the Planning Commission. Development may include one or more of the following or other items as the Planning Commission may determine. Landscaping, including lawns, trees, shrubbery, sprinkler systems, drip watering systems, etc. Other amenities may include such things as park benches, playground equipment, walking paths, etc.

   3% of the bonus density for each 1% of developed useable open space (maximum amount of bonus for additional developed open space is 20% of bonus density).

Examples of Developed Open Space Bonus:

25 acres in the CR-20,000 zone with 5% slope

(1) Base density is 43 lots
(2) Developed open space bonus: Developer donates 1 acre of developed open space and receives of bonus of 5 lots.

43 base density lots x 4% (1 acre equals 4% of the project) x 3% (for each 1% of developed open space, the developer receives a 3% bonus) = 12% bonus or 5 new lots for a total for 48 lots.

25 acres in the CR-40.000 zone with 5% slope

(1) Base density = 25 lots
(2) Developed open space bonus: Developer donates 1 acre of developed open space and receives a bonus of 3 lots.

25 base density lots x 4% (1 acre equals 4% of the project) x 3% (for each 1% of developed open space, the developer receives a 3% bonus) = 12% bonus or 3 new lots for a total of 28 lots.

The developed open space bonus may be used in conjunction with the natural open space bonus in any combination up to the maximum bonus allowed.

3.9.5 **MINIMUM PROJECT AREA.** The minimum base area required to qualify for a Planned Residential Development Project shall be as set forth on the following schedule.

Minimum Base Area

Zone District	Minimum acres required
CR - 20,000	10 acres
CR - 40.000	20 acres
CE - 5	40 acres
CE - 50	100 acres

Notwithstanding these provisions the City Council may, by majority vote, make exception to these minimums. (Amended by Ord. 2004-13, 9/28/04)

3.9.6 **DWELLING CLUSTERS - LOT SIZE - BUILDABLE AREA - SETBACK**

1. All lots shall be located within a designated development cluster. A project may contain more than one development cluster. Each cluster shall contain not less than three (3) separate lots (except for developments having fewer than 3 lots for the entire development). Where a project contains land located within and outside the Sensitive Lands Overlay Zone, development clusters will be located outside of the Sensitive Lands Overlay Zone, to the maximum extent possible. No portion of lots within a PRD shall be located on lands which are required to be designated as open space in accordance with the provisions of Section 3.9.7.3 below.

2. (Ord. 97-23: 9/24/97) The size of each individual lot shall conform to the following:

Zone District	Minimum Lot Size
CR-20,000	10,000 square feet
CR-40,000	20,000 square feet
CE-5	20,000 square feet
CE-50	N/A

3. (Ord 97-02, 2/25/97). Each individual lot shall contain at least one Designated Buildable Area of not less than five thousand (5,000) sq. ft. All dwellings and other habitable structures and accessory buildings shall be located within the Designated Buildable Area.

   (1) Each Designated Buildable Area shall conform to the criteria for qualification as a "buildable area" as defined in this ordinance. Except that the Planning Commission may approve or require the placement of the Designated Buildable Area in a location within the lot which does not conform to one or more of the criteria for buildable area, upon a finding that the proposed Designated Buildable Area:

      a. will more adequately accommodate subsequent development of the lot, and
      b. will not constitute a potential hazard to life or property, and/or
      c. will serve to diminish the negative impact of subsequent development upon the lot or community (i.e. extra-ordinary construction of driveway access, mitigate visual intrusion of structure on ridge line).

   (2) The location of each Designated Buildable Area shall be designated upon the preliminary plan and shall also be identified and described on the final recorded plat, together with a notation to the effect that all main and accessory buildings shall be located within the Designated Buildable Area.

   (3) Where a Designated Buildable Area is shown on a lot, the boundary of said Area shall constitute the Designated Setback envelope applicable to the lot (See Section 3.9.6.4 below). Where an entire lot area qualifies as a Buildable Area no designation on the final plat shall be required.

   (4) Except as permitted pursuant to Paragraph 3.9.6.3.1 above, any portion of a lot which has been graded to produce a percent of slope to qualify under the Buildable Area criteria shall be excluded from consideration as part of the Designated Buildable Area.

   (5) The Designated Buildable Area may be amended by the DRC as long as the minimum setback requirements of the underlying zone are met. (Ord. 2004-13, 9/28/04)

4. Each dwelling in the project shall be setback from the lot boundary line in accordance with the setback lines as shown on the approved plat (Designated Setback Envelope). The Designated Setback Envelope shall be established in accordance with the following:

   (1) Front and side setback adjacent to street - 30 feet.
   (2) Rear setback - 30 feet.
   (3) Interior side yard setback - Aggregate of 30 feet with no less than 12 feet on a side.

The City Council, subject to the prior recommendation of the Planning Commission, may approve a Designated Setback Envelope for one or more lots within a PRD project at variance with the above standard, upon a finding that such variance is appropriate for the proper development of the lot and that such reduction will not result in the establishment of a hazardous condition.

Where no designated building envelope is provided the setbacks shall be the same as the minimum requirements within the underlying zone.

5. The maximum height of any dwelling or other main building shall be thirty-four (34) feet, as determined in accordance with the provisions of Section 3.21.8 of this Ordinance, (Ord. 96-15, 12/18/96) except in the CE-50 zone the height shall not exceed 25 feet. (See Section 3.6.7.1 of this Ordinance.)

3.9.7 OPEN SPACE (Amended by Ordinance 2005-02, 2/8/05)

1. A portion of each project area shall be set aside and maintained as designated open space. The amount of a project area to be set aside as designated open space shall be as set forth in the following schedule:

Zone District	Minimum % of Total Project Area as Common Open Space
CR-20,000	25%
CR-40,000	25%
CE-5	50%
CE-50	50%

2. The designated open space areas may include natural open space, (applicable to steep hillside, wetland, flood plain area etc.) and developed useable open space areas, or a combination thereof.

3. Notwithstanding the minimum open space requirements set forth under Section 3.9.7.1 the designated open space area shall include and contain all 100 year flood plain areas, defined floodways, all avalanche and rock fall hazard areas, all areas having a slope of twenty five (25) percent or greater, or any other area of known significant physical hazard for development.

   (1) An exception may be made by the Planning Commission that up to 5% of an individual lot may contain ground having a slope of more than 25% in the B/C, TR-10, CR-20, and CR-40 zone as long as the lot can meet current ordinance without the exception.

   (2) An exception may be made that an individual lot may contain up to 15% of the lot having a slope of more than 25% in the CE-5 zone as long as the lot can meet current ordinance without the exception. The exception shall be recommended by the Development Review Committee (DRC) to the Planning Commission, and a recommendation by the Planning Commission to the Alpine City Council with the final determination to be made by the City Council. (Ord. 2005-02, 2/8/05)

4. The designated open space area shall be maintained so that its use and enjoyment as open space are not diminished or destroyed. The City will have sole discretion in determining if open space is held in private or public ownership. To assure that all designated open space area will remain as open space, the applicants/owners shall either:

   (1) Dedicate or otherwise convey title to the open space area to the City for open space purposes, or

   (2) Convey ownership of the open space area to the homeowners association established as part of the approval of the PRD or to an independent open space preservation trust organization approved by the City.

   In the event this alternative 2 is used, the developer shall also execute an open space preservation easement or agreement with the City, the effect of which shall be to prohibit any excavating, making additional roadways, installing additional utilities, constructing any dwellings or other structures, or fencing or conducting or allowing the conduct of any activity which would alter the character of the open space area from that initially approved, without the prior approval of the City. The appropriate method for insuring preservation shall be as determined by the City at the time of development approval, or

   (3) A combination of 1 and 2 above.

5. Where the proposed open space includes developed or useable space or facilities (tennis courts, pavilions, swimming pools) intended for the use by project residents, the organizational documents shall include provisions for the assessment of adequate fees and performance guarantees required to secure the construction of required improvements including the costs of installation of all landscaping and common amenities.

6. A detailed landscaping plan showing the proposed landscape treatment of all portions of the project proposed to be developed as, useable, common open space shall be submitted as part of the submittal documents

3.9.8 DESIGN CRITERIA

1. The design of the project shall incorporate the open space and all other criteria applicable to PRD projects.

2. All existing public streets and all streets proposed to be dedicated to the public shall be improved in accordance with City standards for public streets.

3. To the maximum extent possible, the design of the road system shall provide for continuous circulation throughout the project. Cul-de-sacs (dead end roads) shall be allowed only where unusual conditions exist which make other designs undesirable. Cul-de-sac streets shall be not longer than 450 feet and shall be terminated by a turn-around or loop road of not less than 120 feet in diameter.

4. No street shall be constructed in a location or in a manner which results in the creation of a cut or fill slope face exceeding the cut and fill standards of the City or the critical angle of repose for the soils in the disturbed area or a disturbed cross-section area exceeding the cut and fill slope standards for streets in the City. Use of retaining walls is prohibited unless approval is recommended by the City Engineer and the Planning Commission, and approved by the City Council. Any driveway providing access to a buildable area shall conform to the provisions of Section 3.1.10.5 of the Alpine City Development Code. (Ord. 96-13, 10/9/96; Amended by Ord. No. 2007-04, 4/10/07)

5 All disturbed cut and fill slopes created in the course of constructing streets, utility systems or other improvements shall be stabilized and revegetated The materials submitted in support of a request for approval of any PRD project shall include a detailed slope stabilization and revegetation plan showing the intended measures to be employed in stabilizing and revegetating the cut and fill slope areas to be created as part of the project The performance guarantee amounts shall include the estimated cost of stabilization and revegetation (Ord 96-13 10/9/96)

6 Each lot within the Project Area shall abut upon and have direct access to an adjacent public street The width of each lot shall be not less than 90 feet (as measured along a straight line connecting each side lot line at a point 30 feet back from the front lot line), and the length of the front lot line abutting the City street shall be not less than 60 feet (Amended Ord 95-18, 7/11/95)

3.9.9 IMPROVEMENT REQUIREMENTS

The following improvements shall be constructed in all developments All such improvements shall meet minimum City standards and shall be completed within one year from the date of approval of the final plat by the City Council Financial assurances (bonds) guaranteeing the construction of all required improvements shall be submitted and approved as a condition of final approval and shall be administered in the same manner as for subdivisions

1 Streets and travelways
2 Water and sewerage mains and facilities
3 Fire hydrants
4 Any required drainage or flood control structures
5 Any required restoration of cut and fill slopes
6 The costs of installing landscaping and common facilities within any common open space area

3.9.10 WATER RIGHTS CONVEYANCE REQUIREMENTS

Water rights shall be conveyed to the City in accordance with the provisions of Section 3 21 7 of the Alpine City Development Code as applicable

Where the proposed development anticipates the buildings to be located on common property (i e Condominium Ownership) the lot area used to determine the amount of water right required to be conveyed pursuant shall include the territory occupied by the dwelling and the area proposed to be occupied as open space

If it is proposed that a specific open space area remain in its natural, unimproved state the developer may petition the City Council following a recommendation from the Planning Commission for a variance to the water requirement The request shall be evaluated according to the following criteria

1 The open space is a naturally wooded area with indigenous plants and trees such as scrub oak that will not need to be watered or,

2 The open space is in the flood plain and the trees and vegetation will receive sufficient water from naturally occurring streams

3.9.11 DOCUMENTATION REQUIREMENTS

The following documents and statements shall be submitted as part of the application for approval, as applicable.

1. Organizational documents (Articles of incorporation, by-laws etc.)

2. Open space preservation documents.

3. Water rights documents.

3.9.12 REVIEW GUIDELINES AND STANDARDS ADOPTED

In conducting its review the Planning Commission and the City Council shall be guided by the terms of this Section of the zoning ordinance, the Standards and Specifications of the City, the terms and conditions set forth under the Sensitive Lands Ordinance, Article 3.12 in the Alpine City Development Code.

3.9.13 PROJECTS CONTAINING TERRITORY IN MORE THAN ONE ZONE

1. Where a PRD Project Area contains territory in more than one zone the Base Density and any Bonus Density awarded shall be determined separately for the portion of the Project Area within each zone district and the Maximum Total Density shall be the sum of density amounts permitted for each zone district area.

2. The size of lots within the various zone districts shall be in accordance with the requirements applicable within the underlying zone.

3. When approved as part of the project plan the City may authorize the transfer of density from one zone district within the project to another, except that no such transfer of density into territory located within the CE-5 and CE-50 zones shall be permitted.

ARTICLE 4.14 SITE PLAN TO COMPLY (ORD. 92-03 Amended by Ord. 2004-13, 9/28/04)

AN ORDINANCE PROVIDING FOR COMPLIANCE WITH ARTICLE 4.7, ARTICLE 4.8 and ARTICLE 4.10 OF THE ALPINE CITY SUBDIVISION ORDINANCE AND THE ALPINE CITY CONSTRUCTION STANDARDS FOR BUILDING PERMIT APPLICATION FOR SINGLE OR MULTI-FAMILY RESIDENTIAL DWELLINGS NOT LOCATED IN AN APPROVED SUBDIVISION.

4.14.1 Approval of Site Plan for a residential single or multi-family dwelling that is not located in an approved subdivision.

Definitions

Subdivision References to subdivisions in the foregoing provisions shall apply to the property and/or lot for which the building permit is sought

Subdivider Reference to the developer or subdivider in the foregoing provisions shall apply to the contractor and owner of the property for which the building permit is sought

Site Plan Approval Process

1 The DRC and Alpine City Building Inspector shall review the application and plan to determine whether the proposed construction or alteration conforms to the building codes and ordinances of this municipality

2 A building permit application and plan for a residential single or multi-family dwelling which is not located in an approved subdivision shall

   a Conform to Article 4 7, Article 4 8 and Article 4 10 (Subdivision Design and Financial Standards including Water Right Requirements) of the Alpine City Subdivision Ordinance,
   b Conform to the Alpine City Construction Standards,
   c Be reviewed and approved by the Planning Commission and DRC for compliance with the foregoing provisions prior to issuance of the permit,
   d A Developer's Agreement shall be executed between the City and the Developer outlining the conditions of approval of the subdivision The Development Agreement may include but is not limited to the following examples any special conditions, trails, landscape issues, or off-site improvements Rights-of-way must be dedicated to Alpine City

3 The Building Department shall issue a permit and one set of approved plans to the applicant after the plan has been approved by the Planning Commission

4 The Building Inspector shall retain one set of the approved plans and may revoke at anytime a permit which has been issued for any building constructed or being constructed which would be or result, if constructed, in a violation of any ordinance of this municipality

An exception may be obtained from the foregoing provisions by following the procedures set forth in Article 4 1 2 of the Alpine City Subdivision Ordinance